# RACE, RESISTANCE AND THE GENERAL TAX OF 1925:

## A HISTORICAL OVERVIEW OF THE INTERPRETATION AND IMPLEMENTATION OF A SOUTH AFRICAN POLL TAX

by

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## Abstract

This study investigates the first national poll tax levied on African men in the Union of South Africa. Known as the "general tax", it was enacted in terms of the Natives Taxation and Development Act of 1925, and was imposed irrespective of a man's income or impecuniousness. The historical background to the Act is outlined, and debates and disputes leading up to its promulgation are considered. The difficulties underlying the application, interpretation, and enforcement of the Act, are also examined. Court case judgments involving men who denied their inclusion under the Act's central, racial definition of "native", are explored. The case of one individual whose descendants were brought to Natal as "liberated slaves", is discussed in some detail.

The Act's definition of "native" affected not only individual men, but also a number of black groups whose racial and tax status was in some doubt. Responses to a Native Affairs Department directive, explicitly excluding "Hottentots, Bushmen and Korannas" from the ambit of the Act, are accordingly investigated. Problems surrounding the Griquas, whose tax status was initially ignored in legislation and in official circulars, are investigated. The taxation of farm labourers, among the lowest paid workers in the country, is also examined. Queries and complaints from magistrates, white farmers and from African men are recorded. The interpretation of the Secretary of Native Affairs on the relevant provisions of the Act and his responses to queries and objections relating to the taxation of those workers, are also investigated.

## Key terms

poll tax; general tax; "native"; exemption; Native Affairs Department; Secretary of Native Affairs; necessitous circumstances.

## Isishwankathelo

Esi sifundo siphanda irhafu yokuqala yesizwe eyayibizwa kumadoda ama-Afrika kweMdibaniso woMzantsi Afrika. Le rhafu kwakusithiwa yi“rhafu jikelele”, kwaye yayisekwe ngokomthetho owaziwa ngokuba yi*Natives Taxation and Development Act* wonyaka we-1925, kwaye yayifunwa kuwo onke amadoda nokuba ahlupheke kangakanani na.

Imbali yalo Mthetho inikiwe, kwaye kuphononongwe neengxoxo neengxabano ezakhokelela ekuphunyezweni kwawo. Kuqwalaselwe kwakhona ubunzima obavela xa kwakucelelwa ukuphunyezwa kwawo, indlela yokuwutolika nokuwunyanzelisa. Kukwaphononongwe nezigwebo zeenkundla zamatyala ezimalunga namadoda awayesala ukubandakanywa nenkcazelo yalo Mthetho, eyayicalula ngokwebala, neyayisithi “iinzalelwane”. Kuxoxwe banzi ngetyala losapho lwenye indoda olwaziswa eNatala kusithiwa “ngamakhoboka akhululweyo”.

Kuphandiwe ngendlela ababeziva ngayo abantu xa kwaphuma isinyanzeliso seSebe Lemicimbi Yeenzalelwane, esithi “Amaqhakancu, AbaThwa namaKoranna” awafakwa wona kulo Mthetho. Inkcazelo yoMthetho ethi “iinzalelwane” yayingachaphazeli nje amadoda kuphela, yayichaphazela namanye amaqela abantu abantsundu ababengaqondakali ncam ukuba baloluphi na uhlanga, kwaye sisithini isimo sabo serhafu. Ziphononongiwe neengxaki ezazingqonge amaGriqua, wona ayenesimo serhafu esingahoywanga, engananzwanga nangokuseMthethweni nakwiimbalelwano zoburhulumente. Okunye okuphandiweyo kukubizwa irhafu kwabasebenzi basezifama, bona babengabona bahlawulwa kancinci. Zishicilelwe nezikhalazo nemibuzo evela kwiimantyi, amafama amhlophe namadoda ama-Afrika. Ziphononongiwe iindlela zokutolikwa kwezilungiselelo zoMthetho, zitolikwa nguNobhala wemicimbi Yeenzalelwane nendlela lo Nobhala awayephendula ngayo imibuzo nezikhalazo ezazibhekiselele kwabo basebenzi.

## Abstrak

Hierdie studie ondersoek die eerste nasionale hoofbelasting wat op Afrika-mans in die Unie van Suid-Afrika gehef is. Hierdie sogenaamde "algemene belasting" is ingevolge die Naturelle Belasting en Ontwikkeling Wet van 1925 voorgeskryf, en is gehef ongeag 'n man se inkomste of onvermoëndheid. Die historiese agtergrond tot die Wet word uiteengesit, en debatte en dispute wat tot die uitvaardiging daarvan gelei het, word oorweeg. Die probleme verbonde aan die toepassing, uitleg en afdwinging van die Wet word ook ondersoek. Hofbeslissings rakende mans wat hul insluiting onder die Wet se sentrale, rasse-definisie van '"naturel" ontken het, word bestudeer. Die saak van een individu wie se afstammelinge as "bevryde slawe" na Natal gebring is, word in besonderhede bespreek.

Die Wet se definisie van "naturel" het nie net individuele mans beïnvloed nie, maar ook 'n aantal swart groepe oor wie se rasse- en belastingstatus onsekerheid bestaan het. Reaksies op 'n aanwysing van die Departement Naturellesake, wat uitdruklik "Hottentotte, Boesmans en Korannas" van die toepassingsbestek van die Wet uitsluit, word dienooreenkomstig ondersoek. Probleme met betrekking tot die Griekwas, wie se belastingstatus aanvanklik in wetgewing en amptelike omsendbriewe geïgnoreer is, word verken. Die belastingbetaling deur plaasarbeiders, wat onder die laags besoldigde werkers in die land was, word ook bekyk. Navrae en klagtes van landdroste, wit boere en Afrika-mans word vermeld. Die uitleg van die tersaaklike bepalings van die Wet deur die Sekretaris van Naturellesake en sy reaksies op navrae oor en besware teen die belastingpligtigheid van daardie werkers word ook ondersoek.

# Abbreviations

| | |
|---|---|
| ANC | African National Congress |
| CNC | Chief Native Commissioner |
| DDT | Records of the resident magistrates of Dordrecht, Cape Town Archives Repository |
| GEO | Records of the resident magistrates of George, Cape Town Archives Repository |
| ICU | Industrial and Commercial Workers' Union |
| JUS | Records of the Union Department of Justice, Union Archives, Pretoria |
| NP | National Party |
| NTS | Records of the Union Native Affairs Department, Union Archives, Pretoria |
| RM | Resident Magistrate |
| SAIRR | South African Institute of Race Relations |
| SAP | South African Party |
| SNA | Secretary of Native Affairs |
| YMCA | Young Men's Christian Association |

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# CONTENTS

# CHAPTER ONE

# Introduction

poll, n. *a person's head or scalp* (dialect).[1]

poll tax n. *a tax levied on every adult, without reference to their income or resources.*[2]

## 1.1 Introduction

This dissertation is a study of the first national tax to be imposed on African men in the Union of South Africa. The general tax of 1925 was a poll tax, not an income tax. Known more colloquially as a "head tax", it was charged at a flat rate of £1, regardless of a man's income – or lack thereof.[3] Enacted in terms of the Natives Taxation and Development Act, it affected virtually every adult African man in this country.[4] This dissertation will examine some of those effects. It will examine the ambiguities, the inconsistencies and the opacity underlying the application of a racial law and a racial tax. African men were not the only opponents of the Act. The tax exposed fractures and dissension within white South Africa as well: between provinces, among sectors of the economy, and within the state itself.

1. *Concise Oxford English Dictionary*, edited by Angus Stevenson and Maurice Waite (New York: Oxford University Press, 2011).

2. *Ibid.*

3. In legislation, the tax was referred to as the "general tax". The terms "general tax" and "poll tax" are, however, used interchangeably throughout this dissertation.

4. The Natives Taxation and Development Act, No. 41 of 1925. Hereafter also referred to as "the Act".

In a country that was unified just fifteen years earlier, the enactment of the tax was indicative of the increasing centralisation and hegemonic control of the state. This study will show that centralisation notwithstanding, the new law highlighted some of the differences and the conflicting interests of the four provinces. The poll tax, paradoxically, also had opponents among state officials and bureaucrats. These functionaries, who administered the tax on a day-to-day basis, were often forthright in expressing their reservations about its application. Some of those reservations were pragmatic, some humanitarian. The officials were not alone in their misgivings. White farmers – at least in certain parts of the country – were also vocal in their opposition to the tax, albeit for somewhat different reasons.

Magistrates, receivers of revenue, Chief Native Commissioners, "Protectors of Natives", and policemen were all tasked with the daily operation and enforcement of the tax. The Native Affairs Department, however, was the central state body assigned to administer and oversee it. This dissertation will explore how the Department attempted to deal with the many marginal cases that inevitably arose following the imposition of a racial law. It will become obvious that in its attempts to explain and clarify the tax, the department created additional, unforeseen problems for officials who had to implement the law.

The central provisions of the tax are also examined in this dissertation and it will become clear that in terms of convictions, the tax had a major impact on men across

the country. Conviction statistics attest to the fact that thousands of men did not pay the tax – or did not pay it willingly. Inevitably, some of those convictions went beyond local magistrate courts, to be heard in the country's High Courts. The study will attempt to explain how contradictory, ambiguous and inconsistent racial legislation formed the backdrop against which the judiciary set about determining who was subject to the tax and who was not; and in doing so, were obliged to enter a quagmire of legal issues concerning appearance, associations and ancestry.

## 1.2 Objectives of the study

The research aims to investigate a national poll tax levied on African men across the Union of South Africa. The Natives Taxation and Development Act, ratified in 1925, engendered resistance from multiple sources. That resistance will be outlined throughout this dissertation. The study begins by providing some historical background to the new law. It will describe the various provincial taxes on Africans that were enforced prior to 1925 and consider the parliamentary debates and disputes leading up to the enactment of the poll tax. The difficulties and ambiguities underlying the application, interpretation and enforcement of the Act are also examined. The dissertation, in addition, explores the court cases of men who, being in some way at its margins, sought to deny their inclusion within the Act's central, racial definition. It investigates how High Court judges attempted to deal with the anomalies and uncertainties involved in interpreting the Act's definition of "native". The Native Affairs Department's resolution of racial classification issues in terms of

the new Act, are also examined. Those issues pertained not only to individual men, but also to entire population groups whose racial and tax status was in doubt. The department's responses to queries and appeals from individual African men, from various groups and tribes, and from state officials, are investigated. Finally, the study also examines the tax exemption status of one category of men: farm workers. The queries, complaints and objections from magistrates, white farmers and African men regarding the taxation of those workers, are recorded – as are the responses of the Secretary of Native Affairs (SNA).

### 1.3 Sources of previous research in this area

This study was initiated following a review of a number of 1930s High Court judgements. In each of these, an African man was usually the defendant, occasionally the plaintiff. The cases dealt with a seemingly obscure tax – a 1925 poll tax – that had ceased to exist decades previously.[5] The court case judgements were relatively brief, but numerous – approximately 130 in total. Further investigation revealed that no study has as yet been published specifically on the poll tax. Tax rebellions, particularly the Bambatha Rebellion of 1906, have been extensively researched but more generally, the taxation of Africans in this country is a relatively neglected field of historical study. In the works that have investigated tax, the Natives Taxation and Development Act has tended to be a mere part of a broader survey.

5. The tax was repealed in 1969. It was replaced by a tax based on income tax principles in terms of the Bantu Taxation Act, No. 92 of 1969.

The historian Sean Redding is one of few scholars to have made taxation a central theme in her work. Her publications, particularly *Sorcery and Sovereignty* (2006), focus on taxation, state control and supernatural beliefs in the South African context.[6] Redding's work has a different emphasis compared to the research of this dissertation, but she offers a clear methodology and framework for approaching the subject. Her ability to weave disparate sources into a cohesive narrative provided an important guide during the course of this study.

Selbourne Ngcobo's London University master's dissertation (1964), is an examination of the taxation of Africans from the second half of the nineteenth century up to the beginning of the Second World War.[7] Ngcobo provides the most useful overview of the various provincial tax regimes that were applied prior to 1925. In comparison to this study, his research of the poll tax – one chapter in a broader study – gives greater emphasis to public finance issues such as the discriminatory allocation of tax revenues by the state. State attempts to construct, interpret and apply racial definitions in relation to the tax, is not an area he has investigated.

6. Sean Redding, *Sorcery and Sovereignty: Taxation, Power and Rebellion in South Africa, 1880–1963* (Athens, Ohio University Press, 2006). See also Sean Redding, "Legal Minors and Social Children: Rural African Women and Taxation in the Transkei, South Africa", *African Studies Review*, Vol. 36, No. 3 (Dec. 1993), pp. 49–74; Sean Redding, "Sorcery and Sovereignty: Taxation, Witchcraft, and Political Symbols in the 1880 Transkeian Rebellion", *Journal of Southern African Studies*, Vol. 22, No. 2 (1996), pp. 249–270; and Sean Redding, "A Blood-Stained Tax: Poll Tax and the Bambatha Rebellion in South Africa", *African Studies Review*, Vol. 43, No. 2 (Sep. 2000), pp. 29–54.

7. Selbourne Ngcobo, "Taxation of Africans in South Africa (1849 – 1939)" (Master's dissertation, University of London, 1964).

Davidson Jabavu's pamphlet *Native Tax* (1931) is an insightful, contemporary record of an African's response to the tax.[8] Jabavu was the first black academic at the University of Fort Hare and president of the All-African Convention, a body specifically convened to oppose the passage of Hertzog's so-called "Native Bills".[9] His work provided an account focused primarily on economic issues, including the comparison of white and black tax rates, the relative contributions of the racial groups to state revenues, and the proportion of public funds allocated directly to meeting African needs.

For information on black resistance during this period, Peter Walshe's *The Rise of African Nationalism in South Africa* provides a valuable overview.[10] Walshe's work makes a number of general references to the taxation of Africans but only one concerning the 1925 poll tax. Peter Limb's, *The ANC's Early Years* was an indispensable source regarding the responses of the ANC and other black organisations, to the Natives Taxation and Development Act.[11] Saul Dubow's *The African National Congress*, goes some way to explaining the relatively muted and largely ineffective responses of the ANC to the tax over the period of this study.[12]

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8. Davidson Jabavu, *Native Taxation* (Lovedale: Lovedale Press, 1932).

9. See chapter two for further discussion of these Bills.

10. Peter Walshe, *The Rise of African Nationalism in South Africa* (Johannesburg: AD Donker, 1987).

11. Peter Limb, *The ANC's Early Years* (Pretoria: Unisa Press, 2010).

12. Saul Dubow, *The African National Congress* (Stroud: Sutton Publishing, 2000). For further discussion of this point, refer to chapter two of this study.

For a general historical background, Davenport and Saunders' *South Africa: A Modern History*, was useful, as was *The Cambridge History of South Africa*.[13] Leonard Thompson's *A History of South Africa* was also a valuable source.[14] Thompson contends that white farmers formed the core of the Hertzog government's support base.[15] However, the research undertaken for this dissertation indicates that in all likelihood, that support was not as robust as previously thought. Hertzog's consistent refusal to lift the poll tax on farm labour must, at the very least, have eroded his support among a significant segment of the farming sector – particularly in the Cape Province.[16]

For the most part, general histories make little more than a passing reference to the general tax of 1925. The pass laws, on the other hand, have been covered more extensively. For instance, Thompson mentions the poll tax once but makes four references to post-Union pass laws.[17] *The Cambridge History of South Africa* has a single reference to the 1925 tax.[18] The pass laws, by comparison, are cited ten times in that work. The poll tax is not mentioned in the publication by Davenport and Saunders,

13. Rodney Davenport and Christopher Saunders, *South Africa: A Modern History* (London: MacMillan Press, 2000); *The Cambridge History of South Africa, Volume 2, 1885–1994,* edited by Robert Ross, Anne Mager and Bill Nasson (Cambridge: Cambridge University Press, 2011).

14. Leonard Thompson, *A History of South Africa* (New Haven: Yale University Press, 2014).

15. For Thompson, the "main supporters" of the Hertzog administration were white farmers. See Thompson, *A History of South Africa,* p. 161.

16. See chapter six for a full discussion of this issue.

17. Thompson, *A History of South Africa.*

18. Ross ed., *The Cambridge History of South Africa, Volume 2.*

whereas there are twenty references to the pass laws.[19] However, in urban areas these two laws were often inextricably linked. That link was made explicit in a Native Affairs departmental circular issued three months before the tax came into effect:

> A close connexion should be maintained between pass registration and tax control. The registration and monthly stamp issue [of passes] provide opportunities for tax scrutiny of which all officers should avail themselves … It should be understood that every pass official is a scrutineer for native tax purposes.[20]

There was also a tax and pass law nexus in rural areas. Here officials used tax receipts as an additional mechanism of control. Men without a valid receipt could be denied a travel pass – effectively stopping them from obtaining legal employment in South African cities.[21]

Men who could not produce the necessary documents were subject to conviction. Poll tax prosecutions, in fact, were as significant as pass law convictions. In aggregate, poll tax violations accounted for the highest number of convictions in the fourteen-year period prior to the Second World War.[22] Furthermore, women might well have comprised a proportion of the pass law conviction statistics but were not required to pay the poll tax and thus made no contribution to poll tax figures. Consequently, not

19. Davenport and Saunders, *South Africa: A Modern History.*

20. National Archives Pretoria, Union Archive Depot (hereafter NTS), 2510, file 87/293 (G), Department of Native Affairs, Union Circular No. 30, 1925, "Natives Taxation and Development Act, No. 41, 1925", 29 September 1925.

21. John Gcingca, General Secretary of the ANC, complained about the practice to Prime Minister Hertzog, in a letter dated 19 December 1926. See Limb, *The ANC's Early Years*, p. 336.

22. Refer to Table 2 on page 73.

having a valid tax receipt to prove that the poll tax had been paid had dire implications for tens of thousands of men across the country during this period.

Saul Dubow's publication *Racial Segregation and the Origins of Apartheid in South Africa: 1919–36*, provides a thorough overview of the segregationist period and in-depth background material on the Native Affairs Department, as well as details concerning the passing of Hertzog's "Native Bills".[23] The Native Affairs Department was the central state body tasked with the overall administration of the tax and dealing with all related queries. Dubow also supplies some biographical details on a central figure in the implementation and administration of the new tax – the Secretary of Native Affairs, Major John F Herbst. Correspondence to and from Herbst's office forms the basis of the research and is discussed in chapters five and six of this dissertation.

Deborah Posel's "Race as Common Sense: Racial Classification in Twentieth-Century South Africa", was particularly helpful in investigating how the Native Affairs Department came to terms with the fact that race was a "legal and bureaucratic construct which could be adapted to fit the purposes of a particular law".[24] Arthur Suzman's *Race, Classification and Definition in the Legislation of the Union of South Africa 1910–1960*, is an older work but is nevertheless an excellent examination of the racial

23. Saul Dubow, *Racial Segregation and the Origins of Apartheid in South Africa, 1919–36* (London: MacMillan, 1989).

24. Deborah Posel, "Race as Common Sense: Racial Classification in Twentieth-Century South Africa", *African Studies Review*, Vol. 44, No. 2, (2001).

components of the law in post-Union South Africa.[25] His survey provides a useful legal analysis – Suzman was a QC and member of the Johannesburg bar – of the lack of uniformity across a bewildering range of racially-based legislation. Attempting any form of accurate racial definition in the South Africa of the 1920s was at best an approximation and as he points out, in "the final analysis the legislature is attempting to define the undefinable".[26]

Seedat Zubeda's master's dissertation "The Zanzibaris of Durban", supplied the most background material for the only poll trial to be heard in the Appellate Division in Bloemfontein – the country's highest court at the time.[27] The cases of *Fakiri v Rex* were ultimately an attempt by a largely Islamic community to reject its inclusion in the terms of the Natives Taxation and Development Act.[28] Seedat provides a thorough historical account of the community based on the Bluff in Durban, many of whom were of East African origin, and were officially designated as "liberated slaves". Additional material on the Zanzibaris of Durban was obtained from

25. Arthur Suzman, "Race Classification and Definition in the Legislation of the Union of South Africa", *Acta Juridica*, Vol. 339 (1960).

26. *Ibid*., p. 367.

27. Zubeda Seedat, "The Zanzibaris in Durban" (Master's dissertation, University of Natal, 1973).

28. *Fakiri v Rex*, 10 SATC 45; and *Fakiri v Rex*(2), 10 SATC 390.

Gerhardus Oosthuizen,[29] while Preben Kaarsholm also provides material on the subject.[30]

### 1.4 Primary sources

With regard to primary sources, a first visit to the Union Archives Depot at the National Archives in Pretoria proved to be a watershed in the investigation of this topic. It quickly became apparent that the archives has a wealth of letters and documents relating to the poll tax – primarily correspondence to and from the Native Affairs Department. The files include despatches from magistrates, Chief Native Commissioners, Superintendents of Natives, police officers and private individuals. There is also an array of reports, notices, analyses, and clarifying circulars about the tax. While the original aim of this research was to focus more or less exclusively on the Native Taxation and Development Act court cases, after a few days of research at the archives, it became obvious that the repository has an absolute mine of unexplored poll tax information on a number of recurring themes, much of which does not appear in the available published sources.

It was evident, based on the volume of correspondence in the largest archival collections, that two issues – the matter of "exemptions" and the definition of a

29. Gerhardus C. Oosthuizen, "Islam among the Zanzibaris of South Africa", *History of Religions*, Vol. 31, No. 3 (Feb., 1992).

30. Preben Kaarsholm, "Zanzibaris or Amakhuwa? Sufi Networks in South Africa, Moçambique and the Indian Ocean", *The Journal of African History*, Vol. 55, No. 2 (2014).

"native" – occupied most of the Native Affairs Department's time. The "exemption" files include a great deal of correspondence regarding the exemption of farm workers, and an analysis of this issue is the subject of the sixth chapter of this dissertation. There are also many files on a diverse assortment of exemption queries that functionaries had to grapple with. For example: Were printing apprentices, earning five shillings a month at a Lusikisiki mission station, subject to the tax or not?[31] Was a man whose one leg had been amputated 23 years earlier, and who made a living repairing shoes on the veranda of a Port Shepstone store, entitled to receive exemption?[32] And were men in the Orange Free State who were over the age of 60, still entitled to receive the exemption they had previously enjoyed under that province's 1904 poll tax?[33]

Interpreting the legal definition of who was categorised as a "native" in terms of the Act, and who was not, was also a matter departmental officials had to wrestle with. The archival files have copious notes and much correspondence on the issue and there is mention of earlier legislation in which racial definitions appear, along with related court case judgements. Those documents form the entire basis of chapter five of this

31. The apprentices were subject to the tax. See NTS 2510, file 87/293 (I), Secretary of Native Affairs (hereafter SNA) to Resident Magistrate (hereafter RM) Lusikisiki District, 18 July 1926.

32. The man was not entitled to exemption. See NTS 2510, file 87/293 (I), SNA to L.M. Mbili, 20 August 1928.

33. The exemption for men older than 60 years of age in the Orange Free State fell away. See NTS 2510, file 87/293 (I), SNA to the Secretary of the Native Vigilant Society (Winburg), 10 June 1927.

study, as well as parts of other chapters. These files also include numerous abstruse queries: Were the Barolong and Bathlaping people in East Griqualand to be classified as "coloureds" or "natives"?[34] What was the status of men born in Madagascar, and did the island form part of Africa?[35] Were Damara men, from the Springbok area, correct in their assertion that they were not "natives" as defined?[36]

The National Archives in Pretoria offers abundant material on how the segregationist state constructed, applied and administered a racially-based law. The research of primary sources was resumed and extended by a visit to the Cape Archival Repository – an additional rich resource. Direct taxes on Africans in the Cape were the lowest in the Union prior to the enactment of the Natives Taxation and Development Act and many of the disputes, and much of the dissension about the tax, emanated from that province.

Government publications also proved an invaluable resource. The Union government's *Official Yearbooks* have interesting statistics on fluctuating poll tax

34. Magistrates were advised to investigate the circumstances of each individual case. The basis of the Act was "racial and not tribal". See NTS 2510, file 87/293 (G), SNA to L.D. Gilson MP, 23 April 1932.

35. Men of mainland African descent, born on the island, were regarded as "natives". See judgement in *Rex v Dick Koshia* (unreported case). The magistrate was of the opinion that even though the island was part of Africa, the legislators did not intend to include its indigenous inhabitants within the terms of the Act. See NTS 2510, file 87/293 (G), Appendix to Protector of Natives, Kimberley to SNA, 15 August 1927.

36. The men were regarded as "natives". See NTS 2510, file 87/293 (G), RM Springbok to Chief Native Commissioner (hereafter CNC) King William's Town, 2 August 1939.

collections over the period and presented some surprising data on the extent of poll tax prosecutions.[37] Reports issued by the Native Affairs Department, the Native Affairs Commission and the Native Economic Commission afforded insight into how state bureaucrats understood the socio-political function of the tax.[38] Parliamentary debates, as reported in Hansard, also provided insight into white politicians' views of the tax and on underlying post-Union tensions between the provinces that had not been fully resolved by 1925.[39]

## 1.5 Methodology

The relative dearth of secondary sources dealing directly with the poll tax meant that primary sources – archival documents and court judgements – were relied upon for a substantial portion of this dissertation. Glenn Bowen points out that documents may be the only viable source in historical research.[40] Qualitative primary data therefore forms the basis for the exploration of historical and disciplinary standpoints within the configuration of archival and legal sources. Those sources provided a narrative of

37. South Africa, Union Office of Census and Statistics, *Official Year Book of the Union [1926–1940]* (Pretoria: Government Printer).

38. South Africa, Union Native Affairs Department, *Report of the Native Affairs Commission for the Year 1923*; South Africa, Union Native Affairs Department, *Report of the Native Affairs Commission for the Years 1937 and 1938*; South Africa, Union Native Affairs Department, *Report of the Native Farm Labour Committee, 1937–39* (Pretoria: Government Printer); South Africa, Union Native Affairs Department, *Report of the Department of Native Affairs for the Years 1935–1936* (Pretoria: Government Printer); South Africa, Union Native Affairs Department, *Report of Native Economic Commission (1930–32)*.

39. South Africa, House of Assembly, 1925, *Parliamentary Debates* (Hansard).

40. Glenn Bowen, "Document Analysis as a Qualitative Research Method", *Qualitative Research Journal*, Vol. 9, No. 2 (2009), p. 29.

the people and contexts that were affected by the Natives Taxation and Development Act. To a lesser extent, some data was also gathered from historical government sources. According to Bowen, "The rationale for document analysis lies in its role in methodological and data triangulation, the immense value of documents in case study research, and its usefulness as a standalone method for specialised forms of qualitative research".[41]

Much of the primary archival material comprises letters between multiple correspondents on an array of problems and queries. Here a narrative methodology is largely followed. The narrative form positions the central characters – the magistrates, the Secretary of Native Affairs, Chief Native Commissioners and African taxpayers – in "space and time and in a very broad sense give[s] order to and make[s] sense of what happened".[42] In addition, a thematic analysis is applied to the archival data. Recurrent issues, debates and objections are identified and extracted. As already mentioned, two themes are identified, namely the question of who fell within the definition of "native" and who qualified for exemption. Historical documents and case law are used to analyse those issues. Once those themes were pinpointed, most of the material was placed into more or less chronological order to provide some coherence to the narrative structure. Material that was overly specific or limited in its

41. Bowen, "Document Analysis as a Qualitative Research Method", p. 29.

42. Michael Bamberg, "Narrative Analysis", in H. Cooper (Editor-in-chief), *APA Handbook of Research Methods in Psychology (*Washington, DC: APA Press, 2012), p. 3.

relevance to a particular case or individual, was generally not selected for further study.

A narrative methodology was also used to analyse and dissect general tax court cases. Accordingly, the judgements of seven cases where the issue of racial definition was decisive to the outcome, were investigated. Apart from the Natives Taxation and Development Act, a number of other legal statutes are examined. This was primarily an analytical exercise, looking at the similarities and dissimilarities of the legal definitions of "native" across a range of pre- and post-Union legislation. The legislation included the Glen Grey Act of 1894, the Private Locations Act of 1909, the Natives Land Act of 1913, the Liquor Act of 1928, and the Representation of Natives Act of 1936.[43]

With regard to the issue of racial terminology, the examples of Thompson and Davenport are followed in much of this study.[44] The terms African and black are used interchangeably. Occasionally "black" is used in its broader sense, to include other groups such as coloured people and those of Indian descent. The usage should be clear from the particular context. The word "native" is used only with reference to its

43. The Glen Grey Lands and Local Affairs Act, No. 25 of 1894 (Cape); The Private Locations Act, No. 32 of 1909; The Natives Land Act, No. 27 of 1913; The Liquor Act, No. 30 of 1928; and The Representation of Natives Act, No. 12 of 1936.

44. Thompson, *A History of South Africa*, and Davenport and Saunders, *South Africa: A Modern History* both use similar terminology. Neither book provides an explanation or justification for its choice of terminology.

appearance in statutes and government documents. South Africans of wholly European ancestry are referred to as whites and for those of mixed-racial background, the term coloured is used. The terms Khoi and San are used instead of "Hottentot" and "Bushmen". The latter terms are used only in relation to their appearance in statutes and official publications. The terms Griqua and Koranna are used for these racial groups; this is how they appear in official documents.

The dissertation provides some broader historical context on the introduction of the general tax, but deals principally with a period spanning the first fifteen years of the tax's enactment and operation: from 1925 to 1939. There are two main reasons for choosing that period. Firstly, the available archival material indicates that most of the queries, the objections and the administrative debates about the tax, occurred – understandably enough – in the immediate post-enactment period, more or less from 1926 to 1934. Secondly, the majority of High Court cases were heard throughout the 1930s. The number of reported cases tapered off markedly during the Second World War and into the apartheid era. Cases tend to be reported when a new legal precedent is set or an earlier decision overturned. A review of poll tax court judgements indicates that out of approximately 130 reported cases, only 21 were heard after 1939. Just one of those post-1939 cases dealt with the racial definition or exemption provisions of the

Act.[45] Accordingly, this dissertation only covers the fifteen-year period that ends in 1939.

### 1.6 Matters considered beyond the scope of this dissertation

There were two component taxes within the ambit of the Natives Taxation and Development Act: a £1 poll tax and a 10 shilling local tax, colloquially referred to as the "hut tax". Compared to the poll tax, the hut tax contributed a relatively small amount to state revenues. Unlike the poll tax, which was an obligatory payment for virtually all adult African men, the local tax's application was confined to the occupants (both male and female) of huts or dwellings in designated rural reserves. The focus of this dissertation is on the poll tax. The local (hut) tax will also, on occasion, be included in the overall analysis but will not be the focus of analysis. Also considered beyond the scope of this dissertation is a discussion of the "development" provisions of the Act (sections 12 and 13). These provisions addressed the state's allocation of the collected taxes.

As outlined in paragraph 1.5 above, this dissertation examines the first fifteen years of the tax's introduction and operation. For the reasons given above, the thirty-year

45. *Rex v Horn,* 12 SATC 110. The case of *Rex v Horn,* heard in 1942, dealt with the definition of the term "native". In that case, the accused's original conviction for non-payment of the tax was set aside because evidence regarding his parentage could not be rebutted by the Crown.

period after 1939, during which the tax continued to be enforced, is considered beyond the scope of this dissertation.[46]

### 1.7 Structure of the dissertation

The next chapter of the dissertation provides some historical context. The introduction of a uniform poll tax on African men was a delayed result of the Union of South Africa in 1910. The chapter provides an outline of post-Union political developments, labour unrest and a summary of the segregationist legislation that was ratified over the thirty years leading up to the outbreak of the Second World War.

The third chapter describes the various provincial tax regimes imposed on Africans prior to 1925, and considers some of the fractures within white South African politics as revealed in parliamentary debates on the impending enactment of the poll tax. The core administrative and penalty provisions of the new poll tax are then examined and the analysis of the legislation that follows, demonstrates that the poll tax was clearly discriminatory. White taxpayers earning considerably more than Africans could avail themselves of relatively generous income tax threshold exemptions, and accordingly pay little or no tax. A poll tax, by definition, has no such exemptions. The records of two separate districts are also investigated: In one district, official responses to collection problems experienced in the year of the tax's inception, are examined; in the

46. The Act was repealed by the Bantu Taxation Act, No. 92 of 1969 which was based on income tax principles.

other, contrasting government department responses to falling tax revenues in the early 1930s are explored. The research indicates that the penalty provisions of the tax led to the criminal convictions of hundreds of thousands of men over the first fourteen years of its imposition – exceeding convictions for any other category of offence, including pass law offences.

The fourth chapter of this study explores some Supreme Court cases where a number of men were prepared to challenge their inclusion within the terms of the new law. It will focus on seven court cases where men argued that they were not a "native" as defined, and were therefore not liable to pay the tax. It reveals how the judiciary – and by extension, the segregationist state it represented – set out to establish norms in determining a man's race. South Africa's long history of racial and segregationist legislation established considerable case law in this regard. In order to establish a man's racial status that case law repeatedly identified three central tests: ancestry, appearance and associations. The chapter concludes with an account of the only poll tax trial to be heard in the country's highest court at that time: the Appellate Division in Bloemfontein. It will become clear that that trial – and the associated lower court trials – was essentially the response of a relatively insular community, the Zanzibaris of Durban, to the threat the tax posed for them. The Durban Zanzibaris feared – and their fears proved well founded – that payment of the tax would mark the end of their unique, official racial status within the South African state. Having to pay the tax signalled their subsuming into the broader – and in official terms, lower – racial

category of "native" or "bantu". That categorisation meant being subjected to the numerous repressive laws that applied to Africans in this country.

A racially-based tax is messy and intractable to apply. Accordingly, chapter five will investigate how, soon after the tax's introduction, it became clear to the Native Affairs Department that a significant portion of black men in South Africa did not fit easily into the new law's central, racial definition. State magistrates – particularly those resident in the Cape Province's more remote interior – had particular difficulty in determining who was subject to the tax and who was not. In order to overcome these difficulties, the department issued a clarifying circular in which "Hottentots, Bushmen and Korannas" were explicitly excluded from the application of the tax. That circular created problems of its own. The difficulties and inconsistencies of the circular's application are discussed at length in this chapter; and magisterial dissent in applying official instructions is revealed. The decision to exclude "Hottentots, Bushmen and Korannas", from the ambit of the Act also created resentment among Africans. In many cases, these groups lived and worked side by side and the fact that only Africans were subject to the tax engendered acrimonious disputes and calls for the circular's repeal. A further problem that the circular created was that many men began to lay claim – no matter how tenuous – to Khoi, San or Koranna status, in order to evade the tax.

In the sixth chapter, it becomes clear that – while the poll tax's enactment marked a further increase in the centralising power of the segregationist state – it also revealed regional and governmental fissures within the Union. This was not a case of a homogenous, white-controlled state imposing a tax on black men nor was it a tax which was uniformly in white interests. The severe misgivings of many state functionaries – particularly rural Cape magistrates – about the tax's implementation, are recorded in this chapter. In addition, it becomes clear that white farmers, particularly those in the Eastern Cape and Karoo, were solidly against the tax. The point is made that the Hertzog government's support from white farmers was, in all likelihood, more nuanced than has previously been acknowledged. It will also be shown that African men in rural South Africa, along with their representatives in African organisations, regarded the tax with "universal disfavour".[47]

The final chapter of this dissertation summarises and synthesises the conclusions drawn from the various chapters. It also provides an outline of additional aspects of the poll tax's history that require further research.

47. NTS 2510, file 87/293 (I), RM Humansdorp District to SNA, 14 December 1925.

# CHAPTER TWO

# A National Tax on African Men: The Historical Context, 1910–1939

*What is Hertzog's policy? It is a policy of oppression of the native people. We workers oppose segregation with all our might.*

African worker, July 1926[1]

## 2.1 Introduction

The enactment of the poll tax of 1925 represented the completion of an issue that remained unresolved at the time of the Union of South Africa, some fifteen years earlier. A compromise concluded between the four colonies – one of many such compromises – was that their respective taxes imposed on Africans, would remain unchanged at the date of Union. The question of a national tax on black people was one that was dealt with by a post-Union government in later years.[2] The Natives Taxation and Development Act of 1925, therefore, was the delayed outcome of the new social and political order that emerged in 1910.

## 2.2 Segregationist legislation and the Union of South Africa

The newly unified state came into existence on 31 May 1910 with Louis Botha, the former Boer general and now leader of the South African Party (SAP), as its first Prime

1. "Comrade" Hlabanyane, quoted in *South African Worker*, 30 July 1926, cited in R.J. Haines, "The Opposition to General J.B.M. Hertzog's Segregation Bills, 1925–36: A Study in Extra-Parliamentary Protest" (Master's dissertation, University of Natal, 1978), p. 78.

2. Ngcobo, "Taxation of Africans in South Africa", p. 175.

Minister.[3] On his death nine years later, Botha was succeeded by General Jan Smuts, also a former Boer leader. South Africa's status was that of a British dominion and as such, it was in many respects a sovereign, self-governing country, particularly in internal matters.[4] In international affairs, however, it was still bound by the decisions of the British government and ultimately the British Crown – a restriction that rankled a significant segment of white, particularly Afrikaner, leadership.[5]

The issue of the franchise was also a compromise reached between the four newly constituted provinces. The agreement was that the various voting rights currently in place in each colony would remain valid for the time being.[6] The Transvaal and the Orange Free State would continue to allow only white men to vote. In Natal, white men who met relatively low economic thresholds retained their right of franchise. Apart from a small, insignificant minority, African, Indian and coloured men in the Natal colony had been effectively – and continued to be – prohibited from voting. The one significant change in the franchise laws after Union was the loss of the nominal right of African and coloured voters in the Cape to stand directly for election to parliament. The Cape voting laws were ostensibly non-racial but in practice, no African had ever sat in the colonial parliament. By 1909, one year prior to Union, 85%

3. Thompson, *A History of South Africa*, p. 152.

4. Davenport and Saunders, *South Africa: A Modern History*, p. 268.

5. *Ibid*., p. 269.

6. Thompson, *A History of South Africa,* p. 151.

of the Cape's registered voters were whites; 10% were coloured people and the remaining 5% were Africans.[7] However, in the immediate post-Union period, the Cape continued to allow any man to vote, regardless of race, provided that he met a basic literacy test and either earned an income of at least £50 a year or occupied a house and land worth at least £75. Significantly, housing and land in the Cape's rural reserves were not taken into account in assessing those economic criteria.[8]

There were inevitable rifts within white politics – often broadly following divisions between English and Afrikaans speakers. On one issue, though, there was near unanimity of agreement among whites: the country should remain under white control and dominance. Following Union, the so-called "native question" tended to be regarded as a subject for consensus among white political parties. The general agreement was that it should be non-divisive.[9] It was against this backdrop that soon after Union, Botha's government began extending existing segregationist policies and introducing them into the social and political order where they had not been applied before. A raft of segregationist laws began to be enacted – the effects of some were felt for much of the 20th century. The segregationist ideology and agenda that was articulated and realised over the next forty-odd years had five principal elements: the

7. Thompson, *A History of South Africa,* p. 150.

8. *Ibid*.

9. Dubow, *Racial Segregation and the Origins of Apartheid*, 16 and 172. Dubow also points out that the consensus agreement was infringed as often as it was adhered to.

removal of Africans' right to vote in the white-controlled political order; the exclusive use of the vast majority of the country's land for whites only; the increasing regulation and control of Africans residing and working in "white areas"; the regulation of Africans' working conditions; and the creation of ostensible self-government for Africans in rural reserves.[10]

In 1911, one of the earliest segregationist laws of this period, the Mines and Works Act, set aside certain categories of work exclusively for white labour. That same year, the Native Labour Regulation Act made certain civil actions a criminal offence when committed by Africans – foreshadowing what was to occur with the poll tax that was introduced some 14 years later.[11] In the case of the Native Labour Regulation Act – aimed primarily at mineworkers – the breach of a labour contract could be a criminal act. Prior to 1911, as much as 15% of the mining workforce deserted South African mines,[12] but thereafter desertion constituted a criminal offence. Under the new legislation, a worker who had absconded could be tracked back to his home, usually in one of the rural reserves, and then arrested and jailed. After completion of his jail term, the worker would be returned to the mines to finish his contract.[13]

10. Bill Freund, "South Africa: The Union Years, 1910–1948", in Robert Ross, Anne Mager and Bill Nasson (eds), *The Cambridge History of South Africa, Volume 2, 1885–1994* (Cambridge: Cambridge University Press, 2011), p. 235.

11. Walshe, *The Rise of African Nationalism in South Africa*, p. 31.

12. Philip Bonner, "South African Society and Culture, 1910–1948", in Ross, Mager and Nasson (eds),*The Cambridge History of South Africa, Volume 2*, p. 255.

13. *Ibid.*

Two years later saw the introduction of a landmark segregationist law, the 1913 Natives Land Act, the effects of which are still felt to the present day.[14] The Act had two principal aims: firstly, to partition South Africa into areas that could be deemed white-owned and African-owned; and secondly, to prohibit sharecropping by Africans on white farms.

The major implication of the Act for Africans was that they could only purchase land in designated rural reserves, which land amounted to a mere 7.7% of the country's territory.[15] The prohibition of sharecropping meant that Africans could no longer lease sections of a white farm and share some of the produce with the owner. Although the enforcement of the sharecropping law was delayed in the Transvaal, Natal and the Cape, it came into immediate effect in the Orange Free State where tenants were given ten days' notice of eviction or faced paying sixpence per head per day for cattle grazing rights, and three pence per day for sheep.[16] The sharecropping law's principal effect was to undercut African independence in rural "white areas", turning subsistence farmers into wage labourers and reinforcing the master-servant relationship between whites and blacks.

14. On 21 December 2017, Cyril Ramaphosa, the newly elected ANC president, referred to the 1913 Land Act and the continuing need for land reform in the country. See at https://www.fin24.com/Economy/loud-cheers-as-ramaphosa-says-anc54-unanimous-on-land-reform-20171221.

15. Bonner, "*South African Society and Culture, 1910–1948*", p. 256.

16. Walshe, *The Rise of African Nationalism in South Africa*, p. 45.

## 2.3 Black opposition and post-WW1 labour unrest

Black people had no effective voice in the planning or the political structure of the new united South African state. For Africans, the legislation that began to be tabled in the immediate aftermath of Union was cause for alarm. It was within this political milieu that the South African Native National Congress (later the African National Congress) was inaugurated in 1912.[17] For the next four decades it was the sole organisation that had a genuinely national reach and worked on behalf of African interests. Largely under the control of middle-class lawyers, clergy and journalists, the ANC's initial strategy to address injustices was to use "constitutional means" that mainly involved deputations, petitions and other forms of lobbying and moral suasion.[18]

The advent of the First World War in 1914 – and South Africa's involvement in the war as a British dominion – meant that no major segregationist legislation was enacted during the following four years. The War also deepened divisions in white South African politics. At this time, General JBM Hertzog, the Orange Free State leader who had resigned from Botha's cabinet two years earlier, founded a new National Party (NP) in 1914.[19] The central tenets of the party's platform was the advancement of Afrikaner interests and greater independence from the British Empire. The war not

17. Hereafter referred to as the ANC or occasionally as "Congress".

18. Dubow, *The African National Congress*, pp. 6–7.

19. Thompson, *A History of South Africa,* p. 158.

only had political and military ramifications for South Africa, it also brought adverse economic effects in its wake such as high inflation and low gold and mineral prices. In this troubled post-war environment there were demands for increased wages and industrial action became widespread on the Witwatersrand and elsewhere.

By 1917, under the new presidency of Sefako Makgatho, the African National Congress began to adopt a more aggressive strategy.[20] Resistance campaigns against pass laws were initiated and a spate of strikes, with ANC support, followed. Under Congress leadership, Johannesburg night-soil workers came out on strike in 1918. That action led to over 150 workers being imprisoned under the Masters and Servants Act, for violating their contracts.[21]

A year later, strikes and unrest broke out on the coalmines of Natal and the copper mines of the Northern Transvaal, and arrests were made of African demonstrators in Bloemfontein. By February of 1920 an estimated 71 000 gold miners, with ANC support, came out on strike.[22] That same year, the Pietersburg (now Polokwane) branch of the organisation campaigned against a planned increase of the Transvaal poll tax, leading to the arrest of over 100 people. The Transvaal section of the ANC

20. Davenport, *South Africa: A Modern History*, p. 274.

21. Walshe, *The Rise of African Nationalism in South Africa*, p. 72.

22. Bonner, "*South African Society and Culture, 1910–1948*", p. 255.

appealed successfully against the increase and the Transvaal Poll Tax Ordinance was overturned by the Supreme Court.[23]

Despite this conspicuous victory, the ANC did not wrest the initiative from the authorities in most of its campaigns and strikes. The Native Labour Regulation Act of 1911 had not outlawed industrial action entirely but it curbed it enough to ensure that most strikes were largely unsuccessful. The lack of success led to divisions within black politics and during the 1920s the ANC was to some extent eclipsed by more militant movements.[24] The most prominent of these was the Industrial and Commercial Workers' Union (ICU) under Clements Kadalie, an organisation which grew into the largest black protest movement of the decade. It led a fairly successful strike of African and coloured dock workers in 1919,[25] and by October 1920 the Port Elizabeth branch was demanding a minimum wage of 10 shillings per day because of high food prices that had more than doubled over the previous six-year period. The arrest of the ICU's local leader lead to a mass demonstration, the aftermath of which saw 23 Africans shot dead.[26] The ICU gained increasing membership during the 1920's, but by the end of the decade it fell into marked decline due to internal division and external pressure from the state.

23. Limb, *The ANC's Early Years*, pp. 180, 313.

24. Dubow, *The African National Congress*, p. 11.

25. Walshe, *The Rise of African Nationalism in South Africa*, p. 72.

26. *Ibid*.

Labour unrest in the early 1920s was not confined to the African workforce. Semi-skilled mining work had been reserved for white workers prior to the First World War. That protection was eroded during the war but, with thousands of white South Africans returning to the country on demobilisation, the pressure to preserve whites' protected status escalated in the post-war period.

Mine owners, however, had problems of their own. There were rising production costs, the price of gold dropped and there was a need to mine at ever-greater depth to extract lower grade ores.[27] Early in 1922, the Chamber of Mines, with a mere month's notice, terminated the protection of 19 occupational categories, thereby opening them up to cheaper black labour.[28] A protracted strike by white mineworkers followed and took on elements of rebellion.[29] Eventually, by March 1922, martial law was declared on Smuts's orders and the military was called in to break the strike. At its end, over 200 white workers were dead.[30] The violent suppression of the mineworkers' rebellion had major ramifications in white politics, ultimately leading to the ruling party's electoral defeat two years later.[31]

27. Thompson, *A History of South Africa,* p. 159.

28. Walshe, *The Rise of African Nationalism in South Africa*, p. 76.

29. Paradoxically, the Communist Party of South Africa (formed in 1921) came out in support of the strike, effectively placing the interests of white workers above those of black labour. Decades later, the Party, in alliance with the African National Congress, came to power following the country's first democratic election.

30. Walshe, *The Rise of African Nationalism in South Africa*, p. 76.

31. Thompson, *A History of South Africa,* p.162.

However, labour unrest did not impede the enactment of segregationist legislation. From 1918 until the 1924 general election, the Smuts government continued to ratify a range of segregationist policies. One aim of the Native Affairs Act of 1920 was "the ascertainment of the sentiments of the Native population".[32] The plan was to achieve this through a system of government appointed, tribally-based, district councils – a system previously employed in the Transkei but now extended nationally. The Act, according to Jack and Ray Simons, was "a shoddy device to sidetrack the African demand for the right to sit in parliament".[33] The Apprenticeship Act, introduced in 1922, followed. This legislation effectively limited skilled trades to young whites only, while the Native (Urban Areas) Act of 1923 created a blueprint for social segregation in South African cities and towns by authorising municipal authorities to establish separate African locations (also called townships) on the outskirts of urban areas. All African residents of a town, with the exception of domestic servants, were then ordered to move to the townships.[34] The Industrial Conciliation Act of 1924 excluded Africans from the definition of "employee" thereby barring them from the collective bargaining process and the settling of industrial disputes.[35]

32. NTS, UG 40–'25, 1924, Report of the Native Affairs Commission for the Year 1924, p. 13.

33. Jack and Ray Simons, *Class and Colour in South Africa, 1850–1950* (London: International Defence and Aid Fund for Southern Africa, 1983), p. 251.

34. Thompson, *A History of South Africa,* pp. 169–170.

35. *Ibid*., p. 169.

## 2.4 JBM Hertzog and the consolidation of state hegemony, 1924–1939

As indicated, the aftermath of the labour unrest on the Witwatersrand in 1922 saw the defeat of Smut's South African Party at the 1924 general election. Hertzog's National Party, in alliance with the Labour Party, came into power on a platform of greater protectionism for white workers; further Afrikaner economic and cultural advancement; and increased autonomy for South Africa on the international stage. With regard to the "native question", Hertzog's National Party continued to extend and entrench the segregationist policies of its political predecessors.[36] The Wage Act of 1925, and the Mines and Works Amendment Act (also known as the Colour Bar Act) the following year, secured Hertzog's white working class support base. The Wage Act protected poor white, unskilled workers, while the Colour Bar Act aimed at protecting skilled and semi-skilled white workers from black competition.[37] An opposition member of parliament pointed out that with this legislation the government was simultaneously denying black people entry into various categories of employment to which they previously had access, while at the same time increasing their tax burden with the introduction of the 1925 poll tax.[38]

36. Thompson, *A History of South Africa,* p. 160.

37. Davenport, *South Africa: A Modern History*, p. 301.

38. House of Assembly 1925, *Parliamentary Debates*, 25 June 1925, Sir T. Watt, MP for Dundee, col. 4984.

An amendment to the Native Administration Act in 1929 brought all black workers throughout the country under pass law and movement controls. One year later, the Native (Urban Areas) Act was amended to restrict and control the recruitment of farm labour by employers in urban areas.[39] The Native Service Contract Act of 1932 effectively introduced a forced labour regime in rural South Africa.[40] According to a former ANC General Secretary, Sol Plaatje, under this Act farm workers were "virtually owned by the European landowner".[41] Farmers now had the legal right to make use of the labour of workers' families and furthermore the new law authorised the immediate eviction of any worker for not fulfilling contractual employment obligations, including cases (possibly the majority) where there was no written contract. Under the same Act, workers also faced the penalty of a magisterial whipping for infringing their employee obligations.[42]

Hertzog's three landmark "Native Bills", intended to settle African territorial and franchise issues in accordance with government policy, were first tabled in 1926 but had not been enacted by the end of the decade. The Native Land Act Amendment Bill, the Union Native Council Bill and the Representation of Natives in Parliament Bill involved major changes – including constitutional changes – to African land and

39. Davenport, *South Africa: A Modern History*, pp. 309–310.

40. Freund, '*South Africa: The Union Years, 1910–1948',* p. 240.

41. Limb, *The ANC's Early Years*, p. 403.

42. Davenport, *South Africa: A Modern History*, p. 310.

voting rights. Hertzog wanted Cape Africans removed from the common voters roll but in terms of the constitution this required a two-thirds majority in parliament, which for a decade he was unable to secure. During those intervening years, the position of black voters in the Cape was further undermined when white women were enfranchised. With the ratification of the Women's Enfranchisement Act of 1930, the proportion of African and coloured voters in the Cape Province was effectively halved overnight – from 20% to 10% of the electorate.[43] During the ten-year period that it took to enact the "Native Bills", African organisations' responses to them were "uninspiring" according to Haines.[44] The lack of any effective opposition to the proposed legislation was due to "organizational shortcomings; the lack of a strong, cohesive African leadership; the tendency of some leaders to establish personal fiefdoms resulting in 'regionalism'; and the fact that land hunger and poverty muted opposition".[45]

By 1936, however, the National Party and the South African Party had merged to form the United Party, with Hertzog as Prime Minister and Smuts as his deputy. In that year, after a decade of revisions and amendments, Hertzog's three original "Native Bills" were finally enacted as two separate laws, namely the Natives Trust and Land

43. Thompson, *A History of South Africa,* p. 160.

44. R.J. Haines, "The Opposition to General J.B.M. Hertzog's Segregation Bills, 1925–36: A Study in Extra-Parliamentary Protest," (Master's dissertation, University of Natal, 1978), pp. 288, 290, cited in Dubow, *Racial Segregation and the Origins of Apartheid*, p. 172.

45. *Ibid*.

Act and the Representation of Natives Act.[46] With these Acts, Hertzog in effect offered the *quid pro quo* of additional land for the reserves in exchange for the removal of Africans from the Cape's common voters roll.[47] The Native Trust and Land Act finalised the territorial segregation that had begun in 1913. It undertook to increase the "scheduled areas" by an additional 7.25 million morgen.[48] At the same time, the Representation Act – an "epoch-making event" according to the Native Affairs Department – removed registered African voters from the voters' roll in the Cape Province, providing "a solution of the difficulty presented by the Cape Native franchise".[49] In its place, Africans throughout the country were accorded what was dubbed "a special form of representation", which amounted to limited, indirect representation in the house of assembly and the senate.[50]

African opposition to the Bills was led, not by the ANC, but by the specially constituted All-African Convention, under the presidency of Davidson Jabavu.[51] During the 1930s, the ANC had been weakened by a number of factional divisions

46. The Natives Trust and Land Act, No. 18 of 1936 and the Representation of Natives Act, No. 12 of 1936.

47. Dubow, *Racial Segregation and the Origins of Apartheid*, p. 172.

48. *Ibid*., p. 134.

49. NTS, UG 41, 1937, *Report of the Department of Native Affairs for the Years 1935–1936*, p. 23.

50. *Ibid*.

51. Dubow, *The African National Congress*, p. 18.

within its ranks. Its Western Cape branch saw the brief emergence of a breakaway left-wing Independent ANC, and in Natal, there were leadership divisions.[52] By the mid-1930s, the ANC, according to Dubow, was at an unprecedented low-point in its history. National membership had declined to probably little more than a 1 000, whereas at the beginning of the 1920s there had been approximately 3 000 to 4 000 in the Transvaal and Natal alone.[53]

The loss of the Africans' right to vote in the Cape was of symbolic rather than practical significance. It was of emblematic importance to the state in its drive towards hegemonic control. Following Union, successive segregationist governments set out to control and dominate all aspects of black peoples' lives. These measures were presented in benign, paternalistic terms. By 1939, the Native Affairs Commission could report on "the steady furtherance of the national policy of *Trusteeship*".[54] That trusteeship denoted:

> … a solemn duty, accepted by South Africa, to safeguard and advance the interests of the Native people as a race, respecting their own evolving culture and institutions, … assisting always in the building up of a pride of race which, while having its roots securely fastened in the Native reserves will, to its own advantage, co-operate with the Europeans in developing the wealth of the country.[55]

52. Dubow, *The African National Congress*, p. 16.

53. *Ibid*., p. 18.

54. UG 54, 1939, *Report of the Native Affairs Commission for the Years 1937–1938*, p. 4. Emphasis in original.

55. *Ibid*.

## 2.5 Summary

By the end of the 1930s, indigenous people in South Africa were disenfranchised, their movements controlled, their access to land prescribed, their right of residence regulated and their conditions of employment constricted. Virtually any facet of their lives – whether significant or inconsequential – was potentially under state regulation and control.

In 1939, the Native Affairs Commission reported that over the previous two years it dealt with, *inter alia*: "The token system on Natal coal mines"; "Seaside resorts in native territories"; "Training centres for chiefs' sons"; "the granting of church and school sites in native areas"; "Simplification of pass laws"; "Appointment of Natives Representative Council"; "Grants to hospitals and charitable institutions"; "Policy in regard to prospecting in native areas"; "Establishment of aerodrome on trust land at Kingwilliamstown"; "Poverty among natives in certain urban areas"; and "The supply of milk, etc., to native schools".[56]

Twenty-nine years after Union, despite black resistance, the state's hegemonic campaign was largely successful and widely enforced. For Bill Freund that hegemony went beyond mere state control, it had become a "pervasive and internalised dominance" that permeated all aspects of national institutions and civil society.[57] The

56. UG 54, 1939, *Report of the Native Affairs Commission for the Years 1937–1938*, pp. 3-4.

57. Freund, '*South Africa: The Union Years, 1910–1948'*, p. 211.

national poll tax that came into effect in January 1926 was simply one element – although a significant one – in the establishment of that hegemony.

In the next chapter the provincial antecedents of the poll tax will be considered with special emphasis on the regional divisions that emerged in the parliamentary debates that led up to the enactment of the legislation. The chapter will also examine the enforcement and collection measures at the disposal of state officials, and delineate the consequences of those measures.

# CHAPTER THREE

## The Natives Taxation and Development Act: Precursors, Enactment and Enforcement

*There is not the least doubt that we cannot wait any longer to remove the inequality in native taxation. There is no reason why the natives should pay £2 in the Transvaal, £1 10s. in the O.F.S., and 10s. in the Cape Province. As long as this inequality continues to exist the native will say that the white man is to blame for this unequal treatment.*

J.B.M. Hertzog, Minister of Native Affairs and Prime Minister, June 1925.[1]

### 3.1 Introduction

The previous chapter outlined the historical background to the general tax of 1925. This was not a tax conceived and enacted at short notice. It had a fifteen-year gestation period, during which the newly unified state consolidated its power and control. It was, furthermore, a single constituent of a raft of segregationist legislation enacted over a thirty-year period following national unification.

This chapter discusses the provincial taxes on Africans that were superseded by the new tax. The parliamentary debates leading up to the promulgation of the Natives Taxation and Development Act are then considered. Finally, the chapter examines the principal enforcement provisions of the poll tax. Those provisions not only had significant consequences for thousands of African men, they also created numerous problems for state officials who had the responsibility of collecting the tax.

1. House of Assembly, *Parliamentary Debates*, 24 June 1925, Prime Minister J.B.M. Hertzog, cols. 4978–4979.

The Natives Taxation and Development Act came into effect on 1 January 1926 and its general object was to "consolidate and amend the law relating to the taxation of natives and to provide additional funds for the development of education and local government of natives".[2] There were two component taxes to this Act, namely a poll tax to be known as the general tax; and a local tax colloquially referred to as the hut tax.[3] As with most taxes, there were exceptions and exclusions but broadly speaking the general tax was imposed on the vast majority of African men, while the local tax was imposed on the occupants (male or female) of huts or dwellings in designated rural reserves.[4] The poll tax proved to be discriminatory, regressive and punitive. It discriminated against blacks who earned low incomes, relative to white taxpayers earning a similar or even higher wage. A flat tax is inherently regressive: the lower a person's income the higher the effective tax rate, and *vice versa*. The general tax was no different. It not only proved to be regressive between racial groups, but also among Africans themselves. In addition it was punitive, accounting for the highest number of convictions of Africans between 1926 and 1939.[5]

2. Preamble to the Natives Taxation and Development Act No. 41 of 1925.

3. The focus of this dissertation is on the general tax. The local tax will also, on occasion, be included in the overall analysis.

4. In southern Africa, hut taxes were first imposed in the nineteenth century. According to Redding, this type of tax was consistently applied, at least partly, for its simplicity and ease of administration. It was also, effectively, a tax on traditional African polygynous marriage customs, where each wife occupied a separate hut. Therefore it penalised polygyny, a custom regarded as immoral by most white officials. Furthermore, the official view was that men with multiple wives tended to be wealthier, and could afford to pay more in tax. See Redding, *Sorcery and Sovereignty*, p. 38.

5. See Table 2 on page 73.

### 3.2 Provincial precursors to the general tax of 1925

The Act had been introduced in order to consolidate the provincial laws dealing with the taxation of African men. In 1910 the newly constituted Union of South Africa took over the remnants of differing tax legislation and administration from the former Boer republics and the two British colonies. Those tax regimes continued to operate largely unaltered until 1925. For the most part the Transvaal and the Orange Free State applied poll tax systems, whereas in Natal the taxation of Africans was property or land based.[6] In the Cape Province and the Transkei a mix of property and poll taxes was levied.[7]

The Transvaal imposed a £2 poll tax on African men, along with an additional £2 tax on men who had more than one wife. However, Transvaal workers who could prove that they had worked for at least 90 days on farms were only required to pay £1 as a poll tax instead of the prevailing £2 charge. In the Orange Free State, the poll tax amounted to £1, except for residents of the small Witsieshoek reserve who were obliged to pay a £1 hut tax instead of the poll tax. In Natal and Zululand there was a tax of 14 shillings and ten shillings respectively on every hut.[8] (A previous Natal poll

6. South Africa, Union Office of Census and Statistics, *Official Year Book of the Union, No. 7, Covering the Period 1910–1924* (Pretoria: Government Printer, 1924), p. 871.

7. Redding, *Sorcery and Sovereignty,* pp. 58, 70–71.

8. Ngcobo, "Taxation of Africans in South Africa", p. 173.

tax on unmarried African men had been withdrawn in 1913.)[9] In the Cape and the Transkei, a 10 shilling hut tax was enforced. However, the hut tax did not apply in those areas of the Transkei where quitrent was payable.[10] In just over half of the Transkei's districts, men who were not subject to the hut tax (usually those who were young and unmarried) had to pay a 10 shilling poll tax.[11]

In addition to the taxes and tax rates being different in the four provinces prior to 1925, the administration and collection systems varied as well. Native Commissioners, assistant Native Commissioners, and pass registration officers collected taxes in the Transvaal, while in Natal and the Cape, tax collections were carried out by magistrates and the superintendents of locations. Non-commissioned officers of the police, on the other hand, acted as tax collectors in the Orange Free State. In the Cape, Natal and Transvaal the due date for tax payment was on the first day of January, whereas in the Orange Free State it was 1 November. All four provinces allowed a three-month period following the respective due dates, in which to pay the taxes.[12]

9. The Natal Poll Tax Further Suspension Act, No. 8, 1913.

10. *Official Year Book of the Union, No.7, 1924*, p. 871. Most of the land in the Transkei was designated as Crown land. The quitrent system, introduced in terms of the Glen Grey Act of 1894, entitled an individual African man to lease a specific allotment of state land. Quitrent usually amounted to 15 shillings per year but could increase to as much as 45 shillings, depending on the size of the allotment. First-born sons had the right to inherit the quitrent title from their fathers. See Redding, *Sorcery and Sovereignty,* pp. 70–71, 156–157.

11. Redding, *Sorcery and Sovereignty,* pp. 58, 71.

12. Ngcobo, "Taxation of Africans in South Africa", p. 173.

The dissimilarities in systems and rates also led to disparities in the provinces' respective contributions to the national treasury. A Transvaal member of parliament estimated that in 1924, one year before the poll tax's enactment, the tax on Africans in his province raised approximately £450 000. As he put it, "I do not believe that in the Cape Province it reached £100 000, and yet there are more natives there. In the Free State it was also but a small sum, and in Natal with its large number of natives there was only a few hundred thousand pounds."[13] A uniform tax, he went on to point out, would remove "an injustice to the Transvaal natives".[14] This was a view endorsed by Prime Minister Hertzog, who could see no reason "why the natives in the Cape Province should only pay a quarter of what the natives in the Transvaal do."[15]

### 3.3 The proposal of a poll tax

More than a decade had passed since Union and the consensus in white politics was that there had to be national uniformity with respect to the taxation of Africans. Proposals for a countrywide poll tax on black men were first drafted under the Smuts government. In September 1923 a conference of African representatives from the four provinces was held in Pretoria. It was attended by 25 delegates, all of whom were

13. House of Assembly, *Parliamentary Debates*, 24 June 1925, J. Nieuwenhuize, MP for Lydenburg, col. 4978.

14. *Ibid*.

15. House of Assembly, *Parliamentary Debates*, 24 June 1925, Prime Minister J.B.M. Hertzog, col. 4979.

government invitees and was under the chairmanship of F.S. Malan, the acting Prime Minister. The proposed poll tax on Africans was one of the conference topics.[16]

At a follow-up conference in October 1924, the principal point of discussion was the impending tax which was due for enactment the following year. Most of the provisions of the tax had been drawn up by the time of the second conference, and the details were conveyed to the African delegates.[17] It is likely that the tax was a *fait accompli* and that there was little meaningful dialogue on the issue. At the conclusion of the conference the African delegates put forward four key recommendations. Firstly, the tax should be reduced from 20 shillings (or £1) to 15 shillings. Secondly, the delegates pointed out that the tax "should not empower officials or police to demand the production of a tax receipt or to make non-production a criminal offence". Thirdly, some alternative method of collecting arrear taxes needed to be devised, a method which did not involve criminal sanctions. Finally, delegates wanted the maximum penalties reduced.[18] When the poll tax Bill was brought before parliament, the following year, it was apparent that all these recommendations had been ignored.

Opinions on the impending tax, however, were not restricted to state-sanctioned black representatives. In April 1925, two months before the Natives Tax Bill was due to be

16. UG 47 – '23, 1923, Report of the Native Affairs Commission for the Year 1923, p. 19.

17. UG 40 – '25, 1924, Report of the Native Affairs Commission for the Year 1924, p. 13.

18. *Ibid*.

tabled in parliament, Josiah Gumede (a future president of the ANC) addressed a meeting of members in Pietermaritzburg's YMCA Hall.[19] At the meeting, unanimous opposition was expressed against the looming tax – including heated opposition from Zulu chiefs in the audience. Gumede later criticised what he regarded as the surreptitious introduction of the new tax. In his view, the Hertzog government's policies were "a return to the laws of the Boer Republics".[20]

The government's decision to go ahead and introduce a national poll tax on African men meant that consequences which followed the introduction of a similar tax in the Natal Colony less than 20 years earlier, were completely disregarded. In 1906, Natal administrators imposed a new £1 poll tax on adult unmarried men.[21] (Married men were subject to a 14 shilling hut tax.) Resistance to the tax was immediate. Men in a number of districts refused to pay. In February 1906, following attempts to arrest some instigators of the resistance, two white policemen were killed.[22] In the aftermath, martial law was declared and more than a dozen tax resisters were executed. A protracted revolt ensued. The Bambatha Rebellion, named after the Zulu chief who led a significant portion of the revolt, dragged on for almost two years. Based in the

19. Limb, *The ANC's Early Years*, p. 296.

20. *Ibid*.

21. Sean Redding, "A Blood-Stained Tax: Poll Tax and the Bambatha Rebellion in South Africa", *African Studies Review*, Vol. 43, No. 2 (Sept. 2000), p. 31.

22. *Ibid*., p. 32.

Nkandla forest of Zululand, Bambatha and his men were involved in a number of skirmishes with Natal troops.[23] In June 1906 their resistance culminated in a pitched battle with colonial forces and Bambatha and many of his men died. Bambatha's defeat did not mark the end of the rebellion, however. Soon afterwards, in other districts of Natal, white traders and troops were ambushed and sporadic skirmishes continued. When the rebellion finally ended at the end of 1907, more than 3 000 Zulu men had died.[24] Despite the rebels' defeat, the imposition of the Natal poll tax was relatively short-lived. Six years later, in 1913, the Natal Poll Tax Further Suspension Act brought to an end the province's attempt to impose a "head" tax.[25]

### 3.4 Regional rifts in the enactment of the Natives Taxation and Development Act

Despite black reservations and the unpropitious example of Natal's tax history, the enactment of the national poll tax went ahead as planned. However, bringing about the uniformity in African taxation that Hertzog and others called for was not straightforward. The Natives Taxation and Development Bill which was placed before parliament on 24 June 1925, highlighted factional and regional rifts in white politics that re-emerged after the poll tax's introduction. Two issues were consistently raised in the Bill's parliamentary debates. The first centred on provincial farming interests:

23. Redding, "A Blood-Stained Tax: Poll Tax and the Bambatha Rebellion in South Africa", p. 43.

24. Thompson, *A History of South Africa,* p. 148.

25. The Natal Poll Tax Further Suspension Act, No. 8, 1913.

Would increasing the tax be more beneficial to white farmers, or should no tax at all be imposed on workers in that sector? A second issue was the administrative practicalities and difficulties of taxing urbanised African men who lived and worked among coloured people. They had been "thoroughly detribalised" and in some cases only spoke Afrikaans or English.[26] These questions and their proposed answers, underscored distinct provincial divisions.

The implications of the poll tax for farmers was an issue immediately raised in the Bill's enactment debate. Lourens Steytler, MP for the Cape constituency of Albert proposed an amendment explicitly excluding "a native in permanent employment on farms".[27] Farm workers in the Cape were not subject to direct taxation and Steytler argued that the imposition of the poll tax would only exacerbate existing labour shortages. "[W]orkmen on the farms are so scarce to-day as I have almost never known them to be." Some farmers, according to Steytler, could "sometimes get no natives at all".[28] Another Cape MP echoed those sentiments: "The farmers are all sitting with their hands in their hair to get labour."[29] Workers had to be encouraged to

26. House of Assembly, *Parliamentary Debates*. 24 June 1925, J.W. Jagger, MP for Cape Town (Central), col. 4972.

27. House of Assembly, *Parliamentary Debates*, 24 June 1925, L.J. Steytler, MP for Albert, cols 4973-4974.

28. *Ibid*.

29. House of Assembly, *Parliamentary Debates*, 24 June 1925, I.P. van Heerden, MP for Cradock, col. 4984.

come to farms and "the only way is to exempt them from the £1".[30] An exemption for farm workers, furthermore, would stem the migratory drift of Africans from rural to urban areas. "We might restrict the flocking of the natives into the towns, and at the same time rather direct the trend towards the country districts."[31] The urban drift was not the result of low farm wages according to one MP: "We pay the same as in the villages, but the difficulty is that the attractions of the villages and towns are so great that it is a difficult matter to get the natives on to a farm."[32] Furthermore, farm labour ought to be encouraged because "natives are less contaminated and less depraved through work of that sort than they are by working on the mines or in congested centres".[33]

The proposed amendment to exempt farm labour, nonetheless encountered substantial opposition. Transvaal parliamentarians had diametrically opposed views on the farm worker issue. The Transvaal applied a £2 poll tax on African men with a £1 reduction for any man who could prove he had worked for at least 90 days on a farm. This meant that the new national poll tax of £1 represented a general reduction of the tax in that province. Transvaal MPs pointed out that there were also farm labour

30. House of Assembly, *Parliamentary Debates*, 24 June 1925, I.P. van Heerden, MP for Cradock, col. 4983.

31. House of Assembly, *Parliamentary Debates*, 24 June 1925, J.W. Jagger, MP for Cape Town (Central), col. 4996.

32. House of Assembly, *Parliamentary Debates*, 24 June1925, I.P. van Heerden, MP for Cradock, col. 4984.

33. House of Assembly, *Parliamentary Debates*, 25 June 1925, J.S. Marwick, MP for Illovo, col. 5001.

shortages in their province, but rather than exempting workers from the tax they took a different view – the tax needed to be imposed at a higher rate. The MP for Middelburg noted that, "We in the Transvaal would prefer to see the tax higher than lower. The tax which the natives pay is the only lever to get them to work".[34] If that "lever" disappeared, as another Transvaal MP pointed out, "[African men] will be satisfied to sit by the mealie porridge and not to work".[35] The existing Transvaal system of a £2 poll tax should remain unaltered, according to the MP for Witwatersberg; indeed ideally it should be extended to the rest of the country.[36] "[T]he farmers with us will be most dissatisfied if the tax is reduced, because then the inducement to the natives to work will be reduced, and we shall not be able to get any labour in winter."[37] Some Transvaal parliamentarians also claimed, in paternalistic fashion, that the tax was not solely about assisting white farmers, it was ultimately beneficial for African men as well. One added: "They only think of to-day and not of the future, and if we compel them to work then it is therefore chiefly in the interest of the native himself."[38]

34. House of Assembly, *Parliamentary Debates*, 25 June 1925, J.D. Heyns, MP for Middelburg, col. 4976.

35. House of Assembly, *Parliamentary Debates*, 25 June 1925, L.J. Boshoff, MP for Ventersdorp, col. 4977.

36. House of Assembly, *Parliamentary Debates*, 25 June 1925, Lt.-Col. N.J. Pretorius, MP for Witwatersberg, col. 4977.

37. House of Assembly, *Parliamentary Debates*, 25 June 1925, J.D. Heyns, MP for Middelburg, col. 4977.

38. House of Assembly, *Parliamentary Debates*, 25 June 1925, J.F. Naudé, MP for Pietersburg, col. 4987. A similar comment was made by L.J. Boshoff, MP for Ventersdorp, col. 4977.

The views of JBM Hertzog, who was both Minister of Native Affairs and Prime Minister, inevitably held considerable sway. In his opinion, arguments emanating from the Transvaal to increase the tax on farm workers were "very unsound and weak".[39] The government, he said, could not be seen to be furthering the interests of farmers at the expense of their workers. "[T]he feeling would eventually arise that the farmer wants to be unjust to the native to advance his own interests. I am fully convinced that that is not the feeling of the farmers." Up to that time there had been varying provincial tax rates but "I have never yet heard that it is necessary to tax the natives to make them work." He submitted that the "natives pay 10s. in the Cape Province, and here I have never yet heard that the natives will not go out to work. In the Free State they pay £1, and I have not yet heard the complaint that they will not go out to work".[40] If the Transvaal arguments for increasing the tax were "unsound", the Cape proposal for a favourable dispensation for farm workers was not going to be sanctioned either. There were to be no exceptions. Every African man in the Union, including farm workers, was to be subject to the £1 tax. A majority of MPs rejected the proposed amendment to exempt farm labourers.

The parliamentary debates also focused on a second question that yet again cut across provincial lines: How were African men, living and working among Coloureds, going

39. House of Assembly, *Parliamentary Debates*, 24 June 1925, Prime Minister J.B.M. Hertzog, col. 4979.

40. *Ibid*.

to be identified and taxed? The MP for Cape Town (Central) asked what the government was going to do regarding collecting tax from African men "who have become mixed with the Cape Coloured men and become one of them and who are yet full-blooded natives"?[41] The Minister of Finance's only – and unsatisfactory – response to the query was to provide the Act's definition of who would, and who would not, be considered a "native".[42] The problem of African men living in mixed-race areas was principally, but not exclusively, a Cape issue. Another Cape MP noted that he came from a district:

> which has a large number of factories, and you get the native and coloured man working side by side and receiving the same pay. Under [the poll tax] the coloured man would be exempt and the native would be required to pay. Very often the coloured man is drawing higher wages than the native, but they both live under the same conditions and occupy houses almost of the same class.[43]

The MP for Worcester pointed out that there were Africans in his district who had been there for three generations: "[T]hey are entirely unaccustomed to this tax. With some of them, you can hardly say whether they are native or coloured".[44]

41. House of Assembly, *Parliamentary Debates*, 24 June 1925, J.W. Jagger, MP for Cape Town (Central), col. 4972.

42. House of Assembly, *Parliamentary Debates*, 24 June 1925, N.C. Havenga, Minister of Finance, col. 4972. See chapter four for a full discussion of the Act's definition of "native".

43. House of Assembly, *Parliamentary Debates*, 24 June 1925, D.M. Brown, MP for Three Rivers, cols 4974–4975.

44. House of Assembly, *Parliamentary Debates*, 25 June 1925, C.B. Heatlie, MP for Worcester, col. 4986.

The Cape MPs' doubts proved prescient. Post-enactment of the Bill, the practical difficulties of taxing men in mixed race areas became a persistent problem for state officials. An associated difficulty was determining the exact racial status of thousands of men across the Union. Inevitably in a multiracial society, ancestry was often mixed to some degree:

> We are going to have great difficulty in the Cape. On many towns and farms coloured people and natives work together. The native has lost all touch with his old tribal conditions and locations, and is living here in exactly the same way on farms as the coloured people, and if this law comes into operation one man will pay nothing, but the other will have to pay £1. I do not think the system is fair.[45]

When it came to the passage of the Poll Tax Bill, the inter-party consensus on all "native questions" held sway. Despite the purported misgivings of some MPs, on 25 June 1925, the original, unamended, Bill was approved by a comprehensive majority, with 55 votes in favour and only 11 against. That vote meant that the various provincial taxes on Africans were superseded and the new tax became due for implementation on the first day of the following year.

### 3.5 Poll tax enforcement: 'They become as buck upon the hills'

The new Act introduced a general £1 tax on "every adult male native who is domiciled in the Union or who has resided therein for a continuous period of twelve months

45. House of Assembly, *Parliamentary Debates*, 25 June 1925, Sir T.W. Smartt, MP for Fort Beaufort, col. 4988.

immediately preceding the date on which the tax becomes due".[46] In addition to the poll tax, a ten shilling local tax was levied on all huts in "native" locations across the Union.[47] The poll tax was imposed on adult men. Adult was defined in the Act as:

> … a native who has reached the age of eighteen years or, in the case of doubt, who appears to the officer concerned to have reached that age and who does not adduce evidence to the contrary to the satisfaction of the officer.[48]

The tax became due on the first day of January each year and had to be paid within three months.[49] Men who paid the tax were issued with a tax receipt which carried the name of the taxpayer and could also include the names of his father, his headman and his tribal chief (see Figure 1, page 150). It also displayed three sets of numbers: one was allocated to the taxpayer himself; another referred to the district where he lived; and the final number referred to the sub-district where the taxpayer's home village was located.[50]

There were effectively two parallel systems of enforcement: one operated in cities and industrial areas (or "Proclaimed Labour Districts"), the other in small towns and rural areas. The reason for the distinction was that men in rural areas were more likely to

46. Section 2(1) of the Act.

47. Section 2(2) of the Act.

48. Section 19 of the Act.

49. Section 9(1) of the Act.

50. South Africa, Union Native Affairs Department, *Report of the Native Farm Labour Committee, 1937–39* (Pretoria: Government Printer, 1940), p. 17.

possess attachable assets, such as cattle. On the other hand, men in the cities, who were often migrant workers, were likely to possess nothing more than their cash wages.

For men in designated urban and industrial areas, therefore, section 7 of the Act applied. In these areas, every African man – holders of exemption certificates and tax receipts alike – had to carry one of those documents on his person from 1 April each year. From that date onwards, authorised state officials could at any time demand to see the certificate or receipt.[51] Those officials included receivers of revenue (or anyone authorised by them), white policemen, and any tribal chief or headman who had been appointed by the government.[52] If the document could not be produced, the penalties were severe: men could be summarily arrested without warrant.[53] The effects of these provisions were sufficiently onerous to prompt the Minister of Native Affairs – six years after the tax's introduction – to issue mitigating instructions to all police stations.[54] The minister pointed out that, where a man was not in possession of the necessary receipt he could nevertheless, "be capable of a legitimate and reasonable explanation and ... every care must be exercised to avoid the infliction of hardship where a suitable explanation, which can with little difficulty be investigated, is

51. Section 7(1) of the Act.

52. *Ibid*.

53. Section 7(2) of the Act.

54. Cape Town Archives Repository, Records of the Resident Magistrates of Dordrecht (hereafter DDT), 1/DDT 5/23, file 2/8/1, *Government Gazette*, No. 1982, Native Tax: Instructions Issued by the Minister of Native Affairs, 23 October 1931.

offered". The police had to avoid using the "stringent provisions" of the Act when dealing with a "respectable law-abiding native whose residence is known to them or who is in employment. A warning to appear at a suitable time and place will usually be sufficient".[55]

The summary arrest of men who were not in possession of valid tax receipts was not an option available to officials outside of prescribed cities and industrial areas. For magistrates in small towns and rural areas the alternatives available to them for enforcing the tax involved greater "tediousness and laboriousness". On numerous occasions summonses had to be issued. These, according to the Native Affairs Department, were relatively easy to evade and if not evaded were simply nullified by payment of the outstanding tax. Clearly, the system was "not welcomed by the Police".[56]

From 1 July each year, magistrates in country districts could go further and issue writs of attachment. No prior notification had to be provided to the taxpayer before executing the writ; it could be executed as if judgement had been obtained. According to a Native Affairs report, this was a system that functioned best in rural districts "where a number of defaulters are concentrated in a small area with their possessions,

55. 1/DDT 5/23, file 2/8/1, *Government Gazette*, No. 1982, Native Tax: Instructions Issued by the Minister of Native Affairs, 23 October 1931.

56. NTS 2510, file 87/293 (M), Native Affairs Department Report: "*Collection of Native Taxes under Act 41 of 1925 during the Calendar Year 1926*" (undated).

as contrasted with scattered labourers away from their permanent homes in the European areas".[57]

A man confronted by a messenger of the court at his door had two choices. He could either pay the outstanding tax or point to enough moveable property to cover not only the amount of tax owing but also the administrative costs associated with the issuing of the writ. Those costs included the bailiff's tariff of two shillings and sixpence per taxpayer for each year of default. In addition, the bailiff could claim "driving fees" of sixpence per mile, up to a maximum of seven shillings and sixpence. Livestock made up a portion of the confiscated property in rural areas and the messenger of the court was entitled to "herding fees" in line with district regulations. Furthermore, auction fees could also be charged.[58] The act of delivering writs of attachment was often enough of a threat to extract on-the-spot cash payments of the tax. According to the report of a departmental committee of enquiry in 1938, the tax collection system was:

> … not as oppressive as might appear from first impression. Actual sales in execution are very few. Many taxpayers require some pressure before they will meet their liability. As one Native witness expressed it graphically, "they require something behind their neck", and the attachment of the cattle in which their pride and sentiment are involved has the effect of applying that necessary pressure.[59]

57. NTS 2510, file 87/293 (M), Native Affairs Department Report: "*Collection of Native Taxes under Act 41 of 1925 during the Calendar Year 1926*" (undated).

58. 1/DDT 5/23, file 2/8/1, *Government Gazette*, No. 1977, Govt. Notice 1596, "New Regulations in terms of Section 16 of Act No. 41 of 1925", 2 October 1931.

59. UG, South Africa, *Report of the Departmental Committee of Enquiry into the Collection of Native Taxes, 1938*, p. 4.

The protracted procedure of issuing summons and writs of execution nevertheless led many magistrates in small towns and rural districts, to request that their jurisdictions be prescribed as areas where Section 7 of the Act applied, in other words, areas where tax receipts could be demanded summarily for inspection. Under that section, defaulters could be fast-tracked to court without the necessity of issuing summonses and writs of execution, and without the administrative drawbacks of employing messengers of the court. In fact there was a clamour for the application of this particular section in Cape districts.[60]

Ultimately, however, a court appearance loomed for any man – whether from a rural or urban area – who did not or could not, pay the tax. Upon appearing in court the defaulter was ordered to pay the outstanding tax and any associated costs. Payment could either be immediate or within a period specified by court order. Where no payment was made or there was a payment default, the taxpayer faced a prison sentence ("with or without hard labour") of up to a maximum of three months.[61] If the taxpayer, or someone on his behalf, paid the outstanding liability he would be released from prison immediately. For those who completed their full prison sentence, the tax liability was not written off. The tax owing still stood.[62]

60. NTS 2510, file 87/293 (M), Native Affairs Department Report, *Collection of Native Taxes under Act 41 of 1925 during the Calendar Year 1926*, undated.

61. Section 9(3) of the Act.

62. Section 9(4) of the Act.

In 1938, a departmental committee of enquiry acknowledged that African men's mounting tax debts had become an intractable problem for the state. Once payment of a given year's tax was missed, "the accumulative debt becomes too great for [a man] to meet, and consequently his only hope lies in continued evasion".[63] In one centre there was an alarming number of convictions of men who were in arrears for up to twelve years. The committee had to acknowledge that these men had "incurred liabilities which they could not possibly be expected to discharge". A taxpayer's situation would worsen year by year "until at last the mere sight of a policeman's uniform is sufficient to send him into hiding. As one witness expressed it, 'they become as buck upon the hills'".[64]

The general tax was not only punitive, it failed Adam Smith's first and probably most important canon of taxation – it was not equitable.[65] In an addendum to a report of the Native Economic Commission, some of those injustices were pointed out. Many white farmers, for instance, owning farms of 2 000 or 3 000 morgen paid no income tax.[66] The

63. UG, South Africa, *Report of the Departmental Committee of Enquiry into the Collection of Native Taxes, 1938*. p. 3.

64. *Ibid*.

65. Adam Smith, *An Enquiry into the Wealth of Nations* (Lausanne: Metalibri Digital Library, 2007), accessed 28 November 2016, at https://www.ibiblio.org/ml/libri/s/SmithA_WealthNations_p.pdf, p. 639.

66. UG 22, Report of Native Economic Commission 1930–32, 1932, p. 225.

farmer's servant, on the other hand, or an African peasant working a two or three morgen plot in a neighbouring reserve, had to pay £1 general tax plus ten shillings local tax. In urban slums, poor whites, Indians and coloured people paid no income tax, whereas their African neighbours had to pay the poll tax irrespective of earnings.

Jabuvu points out that in 1931 a white man in South Africa only paid tax on an income exceeding £400 per year.[67] In addition there were child rebates available so that if he had four children the tax threshold stood at £640. The contrasting treatment of black and white taxpayers was also highlighted by Sol Plaatje at an ANC National Executive Committee meeting. Unemployed Africans, he pointed out, were forced to "pay the poll tax or go to gaol", whereas unemployed whites were the recipients of state benefits.[68]

The poll tax was thus not only iniquitous because it discriminated against Africans, it was also inherently regressive. Progressive tax rates are the norm across international tax jurisdictions and are regarded as fundamentally fair: the higher one's income the more one contributes, on a relative basis, to state revenues. Conversely, the lower one's income the less one contributes on a proportionate basis. And yet the poll tax was set at a fixed amount of £1. A flat tax, by definition, means that the marginal tax

67. Jabavu, *Native Taxation*, p. 3.

68. Limb, *The ANC's Early Years,* p. 402.

rates for high income earners are lower than those of taxpayers who earn less income, or even no income at all.

The regressive nature of the tax meant that it not only prejudiced African men in relation to white taxpayers, it also discriminated among Africans themselves. The poorest individuals carried the greatest relative tax burden, while those earning higher wages paid tax at lower effective rates. An African peasant earning £12 a year and paying the £1 tax, would therefore be taxed at a rate of 12.5%; an unskilled worker earning £30 per year at a rate of 4.54%; and a teacher earning £60 per year, a rate of 2.5%. All these percentages appear low by twenty-first century standards but they were high in terms of tax rate norms at the time. For example, when the income tax was introduced in South Africa in 1914, the effective tax rate on income of £2 000 was only 1.35%, while a person earning £25 000 only paid tax at a rate of 7.2%.[69]

The poll and local taxes were, furthermore, not the only taxes paid by Africans. According to Jabavu, an African man with a family of five, living in freehold residence in Ntselamanzi township on the outskirts of the town of Alice, paid the following taxes: One pound, one shilling and eight pence – in addition to a five shilling dog tax – to the municipality; ten shillings in quitrent and the £1 poll tax to the Native Affairs Department; and three shillings and two pence to the Divisional Council. Moreover,

69. "2014: 100 Years of Income tax in South Africa", last accessed 1 December 2016, at https://regsdienste.solidariteit.co.za/2014-100-years-of-income-tax-in-south-africa/.

if he owned cows or horses, the first five animals were tax exempt but every additional animal thereafter was taxed at 12 shillings per beast (the standard minimum being six ploughing oxen, one milk cow and one horse), while sheep and goats were taxed at a rate of four and three shillings respectively. His combined tax burden therefore amounted to £4, 15 shillings and 10 pence, assuming he owned no sheep or goats. That figure represented one seventh, or 14%, of his total income.[70]

Nevertheless, according to an undated Native Affairs Department report on taxes collected from Africans in 1926, the year of the tax's introduction, compliance rates were remarkably high in most parts of the country. In Natal, official figures indicated that 94% of men who were liable had paid the tax by year-end. Payment rates in the Cape, the Orange Free State and the Transvaal amounted to 82%, 70% and 56% respectively. Labour conditions accounted for the relatively low rate in the Transvaal according to the official analysis and the conclusion was drawn that a high proportion of the Reef's migrant workers paid the tax in their home districts.[71]

These compliance rates nevertheless masked underlying disparities within the provinces. In 1926, the poorest results, according to the same report, were recorded in the "non-Native areas of the Cape Province". In the Transkei, for instance, 239 692

70. Jabavu, *Native Taxation*, p. 5.

71. NTS 2510, file 87/293 (M), Native Affairs Department Report: "Collection of Native Taxes under Act 41 of 1925 during the Calendar Year 1926" (undated).

men were estimated to be liable for the poll tax in 1926. By the end of the year, an amount of £231 292 had been collected, representing a 96% payment rate. Outside the Cape's rural reserves, however, payment rates fell to a mere 46%. There were a number of official explanations for this discrepancy. Some magistrates indicated that there were disparities between census figures and the actual taxable populations in their districts. There were 31 Cape magistrates (and 12 in the Orange Free State) who claimed that men in their districts were migratory, making it difficult to exact payment. These men returned home to their families when "temporary employment in shearing and other agricultural occupations" was difficult to find. It was also pointed out that after the census of 1921, farmers "dispensed with the services of large numbers of Natives owing to the introduction of Jackal-proof fencing". In addition, the drought had led to a reduction in sheep flocks so the number of black workers on farms had declined in the Western and North-Western Cape. Then too, large public works such as irrigation schemes that were being constructed at the time of the census, had since been completed and men had left those districts.[72]

Significantly, the departmental report acknowledged that in the Karoo, "low wages and drought have made it impossible for the Native to pay his tax". As a result, magistrates in these districts had been reluctant to enforce payment and "exemptions

72. *Ibid*. The increasing use of jackal-proof fencing on Cape farms during the first decades of the 20th century reduced the demand for shepherds. See F. Lilja, "Inside the Enclosed Farm: Farmers, Shepherds, and the Introduction of New Technology in Cape Wool Farming, 1865–1950", *International Review of Social History*, Vol. 63, Issue 1 (2018), p. 84. This article is also available online.

appear to have been given wherever possible". There were also reports of opposition to the tax in three Cape districts (Knysna, Alexandria and Uitenhage) and the magistrate of Douglas complained of a lack of police assistance. In Bedford and Colesberg, messengers of the court refused to serve writs involving long journeys and in Aliwal North the tax was deemed "unpopular". The department concluded that the tax was seemingly unpopular in other districts too, and that this was the "impression gathered from other [magistrates'] reports" although "not explicitly stated".'[73]

### 3.6 Payments and penalties: A record of two Cape districts

One of the districts having problems with collecting the tax was the area of George, on the southern Cape coast. Correspondence between the local magistrate and the Native Affairs Department soon after the tax's introduction, provides some indication of the issues receivers of revenue were dealing with during that first year. Payment of the poll tax fell due for the first time on 1 April 1926 and twelve days after the deadline, the magistrate of George notified the SNA that no one had paid the tax in his district.[74] He had circularised justices of the peace, employers, and ministers of religion, among

73. NTS 2510, file 87/293 (M), Native Affairs Department Report: "Collection of Native Taxes under Act 41 of 1925 during the Calendar Year 1926" (undated).

74. Cape Town Archives Repository, Records of the Resident Magistrates of George (hereafter GEO), 1/GEO 11/9, file 2/1/2, Resident Magistrate (hereafter RM) George District to Secretary of Native Affairs (hereafter SNA), 12 April 1926.

others, regarding "the fact that the law is being ignored". The district's police had also "been active in advising Natives to pay", but to no avail.[75]

Two months later, on 26 June 1926, the magistrate advised local police that with a mere four days before writs of attachment could be served only five men in the district had paid the tax. The police now had to attend to the matter. "The payment of the Tax", the magistrate explained, was "long overdue and every effort must be made to collect the outstanding amounts".[76]

One week later, after the 30 June deadline had passed, the magistrate notified the Native Affairs Department about the numerous collection problems he was facing.[77] Only a paltry amount had been procured. Moreover, the situation in the neighbouring district of Knysna was virtually identical "excepting that while I have succeeded in collecting £5, [the Knysna magistrate] has not collected anything".[78] The magistrate wanted departmental guidance on what action he should take. "I take it that the law must now be enforced … even though it may lead to the arrest of Natives and the affliction of a term of imprisonment." He wanted a countrywide directive on the department's policy for prosecutions: "It would be better for concentrated action to be

75. 1/GEO 11/9, file 2/1/2, RM George District to SNA, 12 April 1926.

76. *Ibid*., RM George District to SA Police, George, 26 June 1926.

77. *Ibid*., RM George District to SNA, 7 July 1926.

78. *Ibid*.

taken by Magistrates rather than for an isolated one here and there to take strong action." He went on to say that there was "no doubt a general disregard to pay the Tax in many districts and I fear that the leniency already extended to Natives has had a bad effect".[79]

Four months after the end of the first tax year, a circular was sent to magistrates in 114 districts (most of them in the Cape) where collection rates were below 50%. Magistrates were called upon to "explain the cause in the shortfall especially in comparison with the Census figures of the taxable population of your district".[80] George was one of those districts. According to departmental records, there were 248 African men in the district, based on 1921 census figures. The department had projected that collections in George, for the year, would raise £150 – presumably migratory labour patterns and other factors had been taken into account in the lower estimate. By the end of the 1926 calendar year, however, only £21 had been raised.[81]

The magistrate, who was obliged to explain the situation, had taken over responsibility for the district of George in September 1926. In his defence, he pointed out that on his arrival in the area, "nothing had been done with a view to collecting the tax". Initially, he did not have time to deal with the problem but now, he explained,

79. 1/GEO 11/9, file 2/1/2, RM George District to SNA, 7 July 1926.

80. *Ibid*., Native Affairs Department circular sent to RM George, 23 April 1927.

81. *Ibid*., Native Affairs Department circular sent to RM George, 23 April 1927.

the matter was receiving his attention "and already a large number of summonses have been issued against defaulters and it is hoped that the end of May [1927] will reveal a considerable improvement in the position".[82] He went on to explain in mitigation that the district had to deal with a floating population of men. This meant that the African population varied "from day to day and consists principally of farm labourers and employees on the Railway Construction and as they are constantly shifting about it has been impossible to estimate even approximately the number liable to tax".[83]

The increased enforcement that the magistrate of George promised was part of a nation-wide increase in convictions in 1927. Where 30 510 men across the Union, had been convicted for non-payment of the tax in 1926, that figure escalated to 50 283 by 1927, a year-on-year increase of 65%.[84] Convictions tapered off somewhat for the following two years but by the early 1930s the effects of the global depression were being felt in South Africa and with it came a fall in state revenues. Initially, poll tax collections had risen annually for the first five years of its enforcement. The 1931/1932 financial year, however, marked the first decline in collections; and by 1932/1933, the

82. 1/GEO 11/9, file 2/1/2, RM George District to SNA, 30 April 1927.

83. *Ibid*., RM George District to SNA, 23 November 1927.

84. Union Office of Census and Statistics, *Official Year Book of the Union, No. 9, 1926–1927* (Pretoria: Government Printer 1928), p. 331; and *Official Year Book of the Union, No. 10, 1927–1928* (Pretoria: Government Printer, 1929), p. 327.

government was collecting less in general tax revenues than it had done in the year of the tax's inception.

| TABLE 1<br>Poll Tax Collections: 1926-27 to 1933-34 | |
|---|---|
| Financial Year | £ |
| 1926-27 | 1 123 000 |
| 1927-28 | 1 165 000 |
| 1928-29 | 1 187 000 |
| 1929-30 | 1 226 000 |
| 1930-31 | 1 244 000 |
| 1931-32 | 1 135 000 |
| 1932-33 | 1 056 000 |
| 1933-34 | 1 073 000 |

Source: Figures compiled from the Union Office of Census and Statistics, *Official Year Book of the Union*, No. 9 to No. 16, 1926 to 1934 (Pretoria: Government Printer).

By October 1932 the Department of Inland Revenue despatched a circular entitled "Native Tax: Police Assistance" to every receiver of revenue in the country. The circular opened by informing receivers that "in view of the very serious fall in native revenue this financial year, I have drawn the attention of the Commissioner of Police to the fact that there seems to be a possibility that many natives, who could comply with the law, are wilfully in default".[85] The Commissioner for Inland Revenue went on to point out that, owing to the "heavy demands" made for police services, the Commissioner of Police was disinclined to allow men under his command to deal with

85. 1/DDT 5/23, file 2/8/1, Department of Inland Revenue Circular to all Receivers of Native Tax in the Union, 5 October 1932.

matters that were not specifically connected with the "legitimate functions" of a police force. Presumably, there was some reluctance on the part of the police service at being enlisted as tax collectors. Nevertheless, it was also noted that, the Commissioner of Police was prepared to "relax his instructions to some extent in view of the urgent necessity of securing revenue" and of making the point to African men that they could not disregard the law.[86]

Every receiver of revenue in the country was asked to give an opinion on whether police assistance would "stimulate" the collection of tax in his district. To receive such assistance, receivers had to provide estimates of the number of men in their districts who were in default. Of these defaulters, they also had to approximate the number who were genuinely destitute. In addition, they had to estimate the number of men who "were sheltering behind the depression who could, if they would, pay the taxes due"; and they also had to indicate whether they had taken measures on their own initiative "to cope with the unusual state of affairs"[87]. It was felt that any such tactics might perhaps be used to good effect elsewhere. One jurisdiction that received the circular – the district of Dordrecht in the Eastern Cape – provides an indication of the differing responses and conflicting concerns of various government departments when dealing with poll tax prosecutions. Following the receipt of the police assistance

86. 1/DDT 5/23, file 2/8/1, Department of Inland Revenue Circular to all Receivers of Native Tax in the Union, 5 October 1932.

87. *Ibid*.

circular, the magistrate of Dordrecht estimated that there were 854 men in default in his district. Of the defaulters, 56 were thought to be destitute. However, in the magistrate's opinion most of the others were simply using the depression as an excuse to evade the tax. He estimated that there was no chance at all that applying "prescribed and ordinary methods" would persuade them to pay their dues.[88]

The Dordrecht magistrate presumably received the police assistance he had requested. This may well have expedited tax collections to the satisfaction of the commissioner, but it caused some consternation in other government departments. One year later, in November 1933, the Secretary of Justice was receiving reports that the Dordrecht jail was overcrowded with men who had been prosecuted for not paying the tax.[89] Reports forwarded to him from the MP for Aliwal North indicated that in many cases these men were too indigent to pay the tax and had to serve sentences in gaol, no doubt causing great hardship to their families. The matter was sufficiently serious to elicit four letters and two telegrams from the Department of Justice within in the space of twelve days.[90] One telegram included instructions that under such circumstances "everything possible should be done [to] keep distressed natives from gaol".[91]

88. *Ibid*., Department of Inland Revenue circular received by RM Dordrecht, 10 October 1932. The magistrate's estimates are written in pencil on the document.

89. 1/DDT 5/23, file 2/8/4, Secretary of Justice to RM Dordrecht, 8 November 1933.

90. *Ibid*., Letters were sent to RM Dordrecht on 8, 16, 18 and 20 November 1933. Telegrams were sent on 8 and 16 November 1933.

91. *Ibid*., Secretary of Justice to RM Dordrecht, 18 November 1933.

Furthermore, unemployed men still in gaol for non-payment of tax should be discharged. The magistrate was given the go-ahead to grant an "extension of time and in more serious cases of poverty [to] grant temporary exemption for the year".[92] The matter had apparently been discussed in the Department of Justice and legal advisors were of the opinion that while the penalty provisions of the Act were valid, a magistrate would be justified in declining to order imprisonment.[93]

The Dordrecht prosecutions were not only noticed by the Department of Justice, they also attracted the attention of the Native Affairs Department. Writing to the magistrate, on behalf of the Prime Minister, the SNA wanted to know whether there was any truth in the critical accounts he had received on the Dordrecht situation.[94] The magistrate was informed that the department had received complaints that Africans in his district were being "harassed and arrested for tax payment" while their circumstance of poverty were such that they were "wholly unable to meet their liabilities".[95]

The Dordrecht magistrate, who had only been appointed to the post for a matter of weeks, provided a forthright and candid response. He informed the Department of

92. 1/DDT 5/23, file 2/8/4, Secretary of Justice to RM Dordrecht, 18 November 1933.

93. *Ibid*., Secretary of Justice to RM Dordrecht, 20 November 1933.

94. *Ibid*., SNA to RM Dordrecht, 14 November 1933.

95. *Ibid*., SNA to RM Dordrecht, 14 November 1933.

Justice that its description of the situation was "substantially correct". Following enquiries, the magistrate had established that "the majority of Natives in this district have not got the money with which to pay their taxes for this year". However, he went on to note that judicial officers had no option but to apply the provisions of the law when tax defaulters were brought before them. In the magistrate's opinion, the best way of dealing with the problem was to grant temporary exemptions "until such time as conditions improve".[96] In answering the SNA, he acknowledge that "a great deal of distress undoubtedly exists among the Natives in this district". He added that the local police were under instructions not to make any "unnecessary arrests". Apprehensions were now only occurring "in those cases where the Natives are able [to do so] but wilfully refuse to pay". Since taking up his duties, at the beginning of that month the magistrate could point to the fact that poll tax cases had decreased considerably. Furthermore, there had been recent good rains and "farmers will now be absorbing a number of Natives for work on the farms [so] the position should be eased".[97]

### 3.7 The general tax: National convictions 1926–1939

The situation may have eased in the Dordrecht district but during the depression of the early 1930s, poll tax convictions reached unprecedented levels on a national scale. As shown in Table 2 below, whereas 30 510 men were convicted in 1926, the count

96. 1/DDT 5/23, file 2/8/4, RM Dordrecht to Secretary of Justice, 14 November 1933.

97. *Ibid*., RM Dordrecht to SNA, 17 November 1933.

surged to 69 760 in 1933 – an increase of almost 130%. From 1926 to 1939, the penalty provisions of the Act led to widespread arrests. In total, 783 857 men were convicted for contravening the Act in that period. Other major categories of convictions were for pass law offences, municipal offences and liquor law offences. Tax convictions exceeded each of those categories. The poll tax was thus the source of the single highest category of convictions in the Union over those years.

TABLE 2

NUMBER OF CONVICTIONS: 1926 to 1939

| Year | Natives Taxation Act offences | Municipal offences | Liquor Law offences | Pass Law offences |
|---|---|---|---|---|
| 1926 | 30 510 | 50 306 | 35 084 | 39 186 |
| 1927 | 50 283 | 55 643 | 36 638 | 40 706 |
| 1928 | 48 169 | 50 867 | 36 388 | 38 726 |
| 1929 | 45 181 | 53 116 | 35 397 | 33 527 |
| 1930 | 50 102 | 36 644 | 47 189 | 42 611 |
| 1931 | 56 892 | 48 915 | 40 647 | 29 057 |
| 1932 | 64 659 | 53 625 | 40 342 | 24 003 |
| 1933 | 69 760 | 56 763 | 50 034 | 25 676 |
| 1934 | 61 487 | 66 648 | 56 442 | 24 685 |
| 1935 | 68 915 | 72 895 | 65 404 | 42 111 |
| 1936 | 63 072 | 48 086 | 70 957 | 63 149 |
| 1937 | 71 100 | 49 550 | 66 254 | 67 426 |
| 1938 | 55 059 | 52 210 | 65 700 | 87 566 |
| 1939 | 48 668 | 56 154 | 77 582 | 101 309 |
| TOTAL | 783 857 | 751 422 | 724 058 | 659 738 |

Source: Compiled from the *Official Year Book of the Union*, No. 9 to No. 21, 1926 to 1940 (Pretoria: Government Printer). Listed in the Justice section under "The predominant offences in the Union based on the number of convictions".

The harsh penalty provisions in section 9 of the Act created resentment and antagonism from the outset. By 1939 this was acknowledged in a departmental report by a committee of enquiry into the collection of taxes from African men. Addressed to the Minister of Finance, the report acknowledged the "undesirability" of police action and criminal sanctions that accompanied tax collections.[98] Numerous men complained of ongoing police demands and harassment regarding the furnishing of tax documents. The argument from many was that when they had discharged their obligation to the state, "they should not be subjected to [providing] constant proof of the fulfilment of their duty". What caused even greater resentment were the early-hour raids on homes in urban townships. These were carried out indiscriminately, on the homes of men who had paid the tax as well as those who had defaulted. According to the report, many witnesses claimed "that the system of tax collection has been largely responsible for a growing sense of antagonism between the taxpayers and the police which might have disastrous effects upon the nation as a whole".[99]

### 3.8 Summary

This chapter began by examining how, prior to 1925, each of the four provinces imposed their own tax regimes on African men. The contrasting provincial responses to the introduction of the poll tax, illustrated in the parliamentary debates leading up

98. NTS, UG, *Report of the Departmental Committee of Enquiry into the Collection of Native Taxes, 1938*, p. 2.

99. *Ibid*.

to its enactment, are then explored. The promulgation of the Natives Taxation and Development Act underscored the contrasting and competing interests of the provinces, particularly between the Cape and Transvaal. The Cape, with its comparatively low provincial taxes, faced the potential for the greatest opposition to the introduction of the tax. The new £1 charge on African men across the country meant that men in the Cape would be more adversely affected, in aggregate, than men in other provinces. On the other hand, the situation of men in the Transvaal was either improved or unchanged. Nevertheless, in the eyes of white Transvaal farmers, that meant the potential loss of a lever of control. In their view, lower aggregate collections in that province could act as a disincentive and thus lead to a shortage of labour on farms.

The new statute was duly enforced from 1 January 1926 and this chapter reveals the discriminatory aspects of the poll tax between whites and blacks, and between black men themselves. Some of the key enforcement and penalty provisions are also examined. Those provisions recognised that men in rural areas – in comparison to migrant workers in cities – were more likely to possess attachable assets of some value. Accordingly, a two-tier system of enforcement was implemented: one in cities and industrial areas, the other for small towns and rural areas. Tax collection rates in the first year varied from province to province and – more revealingly – within the provinces themselves. Unsurprisingly, revenue collections outside the rural reserves were lowest in the Cape which was the province where the tax had the most damaging

effects. As a case study, general resistance and non-compliance in the first year were examined in the district of George. Another district – Dordrecht – encapsulated the contrasting and conflicting interests of various official departments. Here the Department of Inland Revenue's objective of maximising tax collections conflicted with those of the Department of Justice's concerns about overcrowding in jails and the convictions of men who were unable to pay the tax.

The chapter concludes by revealing the repercussions of the tax for thousands of men. Over the first fourteen years after the imposition of the tax, there were 783 857 criminal convictions for non-payment – exceeding convictions for any other category of offence, including pass law offences. Nevertheless, some disputed their convictions. From the late 1920s onwards, men began to challenge the fact that they were subject to the tax and were dissatisfied with magistrates' decisions. Some were prepared to take their cases all the way to the provincial Supreme Courts. The next chapter will examine some of those cases. It will explore the judicial responses to those challenges and will also provide some historical background to the confusing and often contradictory definitions of the term "native" in pre- and post-Union legislation.

# CHAPTER FOUR

# Ancestry, Appearance and Associations: The Poll Tax Trials, 1926–1939

> *I…say that I am not a Native as defined in the Laws of the Union of South Africa, that I have nothing in common with the Natives of this land, nor do I follow their customs and manner of living.*
>
> Petition addressed to JBM Hertzog, Minister of Native Affairs, November 1925.[1]

## 4.1 Introduction

There were no uprisings or outright rebellions associated directly with the poll tax, but from the outset there was widespread resistance to it. Payment defaults were persistent and pervasive. Hundreds of thousands of African men simply did not pay the tax and convictions followed.[2] Some of those convictions, however, did not go undisputed. In the previous chapter the enforcement provisions of the tax and the resulting convictions, were examined. This chapter explores how some of those convictions were contested in the county's High Courts. Each of these cases centred on the legal definition of the term "native".

Across the country there was a steady flow of High Court trials where cases against African men, or reviews of earlier convictions, were heard. From the introduction of the tax in 1926 until the start of the Second World War, approximately 130 such cases

1. NTS 2510, file 87/293 (I), Excerpt from petition by Marranso Maraintapura, addressed to the Minister of Native Affairs, 28 November 1925.

2. Refer to Table 2, chapter three.

were reported. Most took place during the 1930s, some had successful outcomes for the men, and some not. Although these trials represented a fraction of the total number of cases dealt with by lower court magistrates and Native Commissioners – most of which were never contested or reviewed – they nevertheless provide insight into how the High Courts dealt with a range of legal questions that the tax engendered. The majority of these dealt with relatively prosaic issues. Had a man been arrested by an unauthorised official? Was the defendant actually 18 years of age, and therefore an adult, or not? Had the appellant been convicted twice for the same offence? A few cases, however, centred on the crux of the Act – who could be categorised as a "native" and who could not? This chapter examines how the judiciary approached the intractable issue of racial definition and classification.

## 4.2 The definition of "native": A mutable statutory history

For some of the men, the challenge against their convictions went to the central core of the Act. They based their dissent on a single, but crucial, contention that they were not "natives", as defined in the Act and accordingly were not liable to pay the general tax. In all these cases the men were, or purported to be, of mixed racial ancestry. That ancestry meant they were at least at the margins of the definition of who was indeed a "native". A "native", according to the original 1925 version of the Act, referred to:

> … any member of an aboriginal race or tribe of Africa and includes any person who in the opinion of the receiver is residing in a native location under the same conditions as a native.

> Where there is any reasonable doubt as to whether any person is a native as thus defined, the burden of proving that he is not a native shall be upon such person.[3]

Aside from any ethical considerations, legislation based on racial characteristics is usually abstruse, opaque and difficult to apply. It was up to the courts to come up with a seemingly coherent method of determining who fell within the Act's ambit and who did not. That was not easily accomplished. In both the pre- and post-Union periods, South Africa had a history of enacting a bewildering array of racial legislation. In many cases the statutes had no definition of racial terms at all, and a noteworthy feature of those that did, was the "variability and imprecision on the subject of race".[4]

Prior to Union, the legal definition of "native" could be nothing more than a vague, makeshift list of racial and tribal groups.[5] Some pre-Union statutes incorporated a geographic location into the definition as well.[6] The inconsistencies were numerous, with men from various groups being regarded as "natives" in one statute and not in

3. Section 19 of the Natives Taxation and Development Act, No. 41 of 1925.

4. Deborah Posel, "Race as Common Sense: Racial Classification in Twentieth-Century South Africa" *African Studies Review*, Vol. 44, No. 2 (2001), p. 89. Article also available online.

5. For example, a native, for the purposes of the Glen Grey Lands and Local Affairs Act, No. 25 of 1894 (Cape), simply included "Kafirs, Fingoes, Basutos, Zulus, Hottentots, Bushmen and the like". See NTS 2507, file 87/293 (G), "List of Legislative Enactments in which reference is made to Races and their classifications as furnished by the Legal Advisor to the Group Areas Board", 8 and 22 January 1958.

6. A native, in terms of the Private Locations Act, No. 32 of 1909 (Cape), included "any Basuto, Bechuana, Damara, Fingo, Griqua, Hottentot, Kafir, Koranna, Pondo, Zulu or other native of South or Central Africa".

another. Paradoxically, the unification of the country did not mean that legal disparities declined. According to Posel, "the more prolific the legislation, the greater the ambiguities and inconsistencies surrounding the definition of race, as each new law took its own stand on the subject".[7] "Hottentots", for instance, were "natives" for the purposes of the Workmen's Compensation Act, but in terms of the Liquor Act, did not meet the definition.[8] "American negroes" were not "natives" in terms of the Registration for Employment Act, but were regarded as such for the purposes of the Disability Grants Act.[9] "Bushmen" were "natives" in respect of the Liquor Act but not in the 1931 amended version of the Natives Taxation and Development Act.[10]

The core phrase in virtually all definitions of "native" in post-Union legislation was a "member of an Aboriginal race or tribe of Africa".[11] As Suzman points out, the terms Aboriginal, race and tribe were not defined in any statutes.[12] The geographical term Africa was also highly malleable. Most statutes simply included the entire continent.

7. Posel, "Race as Common Sense", p. 90.

8. Workmen's Compensation Act, No. 59 of 1934, sec. 84; Liquor Act, No. 30 of 1928, sec. 175. See also Arthur Suzman, "Race Classification and Definition in the Legislation of the Union of South Africa", *Acta Juridica*, Vol. 339 (1960), p. 351.

9. Registration for Employment Act, No. 34 of 1945, sec. 1 and Disability Grants Act, No. 36 of 1946, sec. 1. See Suzman, "Race Classification and Definition", p. 351.

10. Liquor Act, No. 30 of 1928, sec. 175; Natives Taxation and Development Act, No. 41 of 1925 (as amended by sec. 10 of Act No. 37 of 1931).

11. This fact was noted in the case of *Rex v Radebe & Others*, 1945 AD 590. See Suzman, "Race Classification and Definition", p. 348.

12. Suzman, "Race Classification and Definition", p. 348.

In others, only members of tribes "south of the equator" were included within the broad definition.[13] In some, the term was expanded to include the phrase "and it's Islands".[14]

Parentage was important in other statutes. To meet the definition it was a requirement of the Births, Marriages and Deaths Registration Act that both parents belonged to an "Aboriginal race or tribe of Africa".[15] The Local Governance Ordinance No. 19 expanded the definition to include anyone who had only one parent belonging to an indigenous African race or tribe.[16] By 1936, the definition had been extended – in the landmark Representation of Natives Act and Natives Trust and Land Act – to include anyone who had one grandparent belonging to an "aboriginal race or tribe of Africa".[17] In these two Acts, language also became a prerequisite for meeting the definition. In the Natives Trust and Land Act, for instance, a "native" included a person who used "one or other native language as his customary or natural mode of expression".[18]

13. Suzman, "Race Classification and Definition", p. 350, gives the examples of the Administration of Estates Act, No. 24 of 1913, sec. 2 and the Magistrate's Court Amendment Act, No. 13 of 1921, sec. 4.

14. *Ibid*., As in the Municipal Corporations Ordinance, No. 58 of 1903 (T), sec. 2.

15. *Ibid*., p. 349, the Births, Marriages and Deaths Registration Act, No. 17 of 1923, sec. 35.

16. *Ibid*., p. 348, the Local Government Ordinance, No. 19 of 1912 (T), sec. 2.

17. *Ibid*., the Representation of Natives Act, 1936, sec. 1 Native Trust and Land Act, 1936.

18. NTS 2507, file 87/293 (G), Native Trust and Land Act, 1936 sec. 19. Definition in "List of Legislative Enactments in which reference is made to Races and their Classifications", January 1958.

### 4.3 The poll tax trials

It was against this muddled and confusing statutory backdrop that the South African judiciary had to make sense of racial classification issues in the Natives Taxation and Development Act cases that were brought before the courts. Three factors appear to have underpinned the judiciary's approach to the problem, namely: ancestry, appearance and associations.

The Act placed one significant legal obstacle in the path of any African who attempted to contest his inclusion in the definition of a "native" person. This was in the second part of the definition and read: "Where there is any reasonable doubt as to whether any person is a native as thus defined, the burden of proving that he is not a native shall be upon such person".[19] The onus, therefore, was on the African men themselves – not on the Crown – to prove that they were *not* "natives" as defined, based on their ancestry, appearance and associations. If they could not provide that proof, they had no case; and accordingly their tax debt stood.

The first case of this kind, *Mahomed v Rex*,[20] was heard in 1930. Mahomed had not paid the poll tax from its inception; and in 1930 he was convicted in a lower magistrate's court for non-payment of five years' worth of tax (1926 to 1930).[21] He appealed the

19. See sec. 19 of the Act.

20. *Mahomed v Rex*, 5 SATC 61.

21. *Supra,* at 62.

conviction in the Transvaal Provincial Division of the Supreme Court. Mahomed had, under oath, stated that he was born in Madagascar, as were his ancestors. As far as he was concerned, he was not a "native" as per the definition. It was Mahomed's legal team that proposed the "proper test" for establishing whether he should be included within the definition or not.[22] Citing cases that were unrelated to the poll tax, the tests of ancestry, associations and appearance, were used and approved by the court, for the first time within the context of the Natives Taxation and Development Act.[23]

With regard to his appearance, Mahomed, according to the court, looked African and the Crown brought forward witnesses to testify to that fact. For one witness, there was "no difference between accused's hair and that of the Zulu". His complexion was also described as "similar to that of a Zulu".[24] The constable who had originally arrested him stated that with regard to the accused's appearance he took him to be a "native" and accordingly demanded that he produce "his general tax receipt or letter of exemption". As far as the constable was concerned there was "no marked distinction in features between accused and other natives, for example, Zulus, etc.".[25]

22. *Mahomed supra,* at 63.

23. *Supra*. The tests of ancestry, associations and appearance were previously applied in the cases of *Rex v Swarts,* 1924 TPD 421; and *Rex v Sonnenfeld,* 1926 TPD 597.

24. *Supra,* at 62.

25. *Supra*.

For the court, therefore, he appeared to be African; and in terms of his associations, Mahomed had an additional problem in that he had married an African woman and he lived among Africans. Mahomed's defence lawyers clearly felt that while he might not pass the appearance and association tests, his Madagascan ancestry was enough to exclude him from the Act's ambit. Their strategy failed, however. Mahomed had no substantive evidence that he was from Madagascar and so, according to the judge, it was unnecessary to decide whether Madagascar was a part of Africa or not. Had he been in possession of that evidence, the judge was prepared to concede that he might have won his case:

> It may be that if the accused proves that he was born in Madagascar ... that the court may be able to come to the conclusion that he is not a member of an aboriginal race or tribe of Africa, but it is impossible for us to say on the mere statement that he came from Madagascar.[26]

Mahomed lost his case due to lack of evidence. He needed more substantive proof, and he could not provide it. His "mere statement" that he was from Madagascar was insufficient. With no official, supporting ancestral documentation, the first poll tax challenge, based on its central racial definition, was lost.

A few months after Mahomed's case, a second appeal against a magistrate's court decision was heard in November 1930, this time in the Eastern District Local Court, the highest court in the Eastern Cape. In *Rex v Tshwete*, the defendant had failed to pay

26. *Mahomed supra,* at 63.

the general tax from 1927 to 1930.[27] He had been convicted in a lower magistrate's court and ordered to pay the outstanding four years' tax of £4. Tshwete challenged his conviction on the basis that he was a coloured person, partially of European ancestry and therefore not liable to pay the tax. As far as Tshwete was concerned, he did not fall within the definition of being a "native".

Once again, the three tests of appearance, ancestry and association were applied in order to come to a final decision. Tshwete's appearance was indecisive. According to the judge, his:

> … complexion had a ruddy tint, his hair though black and crinkly was not of the tightly curled variety common to the Bantu races. Had accused wish to call himself a "coloured person" he may well as pass as such; on the other hand if he said he was a "native" the ordinary observer would not decline to accept his statement.[28]

When it came to Tshwete's ancestry the court accepted that he was of half African and half European descent. Tshwete was the illegitimate son of a white father and an African mother. This fact was not in dispute. However, his associations were more problematic for him. Tshwete had been brought up among Africans and Xhosa was his first language. He had also undergone the circumcision ceremony according to traditional Xhosa practice and in 1904 had married an African woman. Following the death of his wife, he lived with another African woman and he associated mainly with African people.

27. *Rex v Tshwete*, 5 SATC 64, at 65.

28. *Supra*.

Citing earlier case law, the court concluded that where the tests of ancestry and appearance were indecisive, the third test – a man's associations or "habits of life" – could be final and decisive, tipping the scales for or against the appellant.[29] The test of Tshwete's appearance was inconclusive but his European ancestry on his father's side, was regarded as indisputable. Those factors, however, were not enough to support Tshwete's case. The association test became all-important in his trial, tipping the scales against him. His case was lost because he was "residing in a native location under the same conditions of a native".[30] Tshwete's appeal was dismissed because his habits were "almost entirely [those] of a native within the meaning of the Act". He was thus held liable to pay the tax and his original conviction was confirmed.[31]

Tshwete's case set a precedent. It was clear from this decision that men of mixed racial heritage would not necessarily be excluded from the application of the Natives Taxation and Development Act. Their appearance or "habits of life" could be enough to force them to pay the tax.

The tests of ancestry, associations and appearance were, however, not necessarily a cast-iron guarantee for the state that men at the margins of the definition would be

29. *Tshwete supra,* at 66. The cited cases were: *Nelson v Rex,* 1911 EDC 34; *Rex v van Niekerk,* 1912 CPD 582; and *Rex v le Fleur,* 1927 EDL 340.

30. Section 19 of the Act.

31. *Tshwete supra,* at 65.

obliged to pay the tax. After Tshwete's case, a number of men were to use the tests to their advantage. The first such case, *Rex v Makwena,* was heard in 1932.[32] Makwena had appeared in a magistrate's court in Pearston, in the Eastern Cape, for the non-payment of four years' tax (1928 to 1931). He had originally pleaded guilty and was ordered to pay the outstanding £4, or face three months' imprisonment. The tax was not paid and Makwena was jailed in Somerset East.

It was during his incarceration that Makwena, via the prison jailer, requested a review of his case. The request was based on his contention that his mother was a Khoi, although he admitted that his father was a Makatees, of African origin. During the first six years of the Act's enforcement, its definition of a "native" made no reference to men of Khoi, Griqua or San descent. From the very outset they were excluded *de facto*, if not *de jura,* from the application of the Act. A Native Affairs departmental circular made this exclusion explicit.[33] However, by the time of Makwena's trial, the Act's definition had been amended and men of Khoi origin were by law specifically excluded.[34]

32. *Rex v Makwena,* 5 SATC 333.

33. *Supra,* at 335. See chapter five for a full discussion of the Native Affairs Department Identical Minute No. 87/293, 3 July 1926.

34. The principal Act of 1925 was amended by section 10 of Act No. 37 of 1931. The amending section substituted a new definition of "native": "Native" means any member of an aboriginal race or tribe of Africa but does not include a person in any degree of European descent (even if he be described as Hottentot, Griqua, Koranna or Bushman) unless he is residing in a native location under the same conditions as a native.

Makwena's contention that he was partially of Khoi extraction meant that potentially he could be excluded from the definition provided that he was not "residing in a native location under the same conditions as a native".[35] The jailer forwarded Makwena's request for a review of his conviction to the magistrate of Pearston along with a statement of his own supporting Makwena's application. According to the jailer, Makwena was a "Hottentot", due to his yellowish complexion and the texture of his hair. To further support his contention, the jailer pointed out that Makwena did not mix with the African inmates in the jail.[36] The jailer's statement, together with the proceedings in the case, were sent to the registrar of the Eastern District Local Court. It was here that the review of his case was heard. The court had to admit that his complexion was indeed yellowish and his hair was "typical Bushman's hair".[37] Based on his appearance, the court acknowledged the truth of Makwena's statement that his mother was a Khoi.

Makwena's appearance and mixed racial ancestry were potential aspects in his favour, but they were not necessarily decisive – as Tshwete had found. However, Makwena had one important factor in his favour: he spoke Afrikaans, and only Afrikaans. His disposition, according to the court, was that of a Cape Coloured person.[38] The fact that

35. Section 19 of the Act.

36. *Makwena supra,* at 335.

37. *Supra*.

38. *Makwena supra,* at 334.

he did not mix with other African prisoners also counted in his favour. Makwena, unlike Tshwete, could use his mother tongue, his disposition and his associations, in his favour. At the end of the trial he was released from jail with the Solicitor General agreeing to make further enquiries into the case.

Three years after the Makwena verdict another similar case was reported in the Eastern District Local Division court. In *Rex v Vlotman* the accused had failed to pay his 1934 poll tax.[39] In fact, he had never paid the tax since its inception.[40] Vlotman's father was a Cape Coloured person and his mother was partly of coloured and Griqua descent. These acknowledged facts had not assisted him in the lower magistrate's court. As far as that court was concerned, Vlotman "resided in a native location under the same conditions as a native" and therefore was a "native" as defined.[41] He was ordered to pay the tax or face three weeks' imprisonment with hard labour. Vlotman requested a review of his case because he disputed the fact that he could be classified as a "native" as defined in the Act. His mixed race and Griqua origins were not contested. In most cases those origins would be enough to exclude a person, providing that he did not reside "in a native location under the same conditions as a native".[42]

39. *Rex v Vlotman*, 7 SATC 214.

40. *Supra,* at 216.

41. Section 19 of the Act.

42. *Ibid*.

Vlotman's case was unusual in that it was the only reported case that hinged solely on the legal meaning of the term "native location". This term had a technical meaning and essentially included the country's rural reserves.[43] A "native location" did not include urban or municipal African townships under the control of a local authority.[44] Where Vlotman lived – the physical site of his residence – rather than how he lived, was regarded as the crux of the case. The defendant lived in Penny's Location in the coastal town of Port Alfred, situated in the Eastern Cape. The central issue of the case was whether Penny's Location was in fact a "native location"; if not, then the question whether Vlotman resided under the same conditions as those of a "native", was irrelevant. In his ruling, the judge pointed out that Penny's Location could either be an urban or municipal location or perhaps more likely, "an entirely private location, which is not a 'native location' in terms of the Act".[45]

Due to his mixed race and Griqua background, the Crown failed to prove that Vlotman was "a member of an aboriginal race of Africa who is not in any degree of European descent"; and in addition it failed to prove that he lived in a "native location" within the terms of the Act. As a result, on 19 November 1934, Vlotman's conviction and sentence were overturned.

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43. In terms of section 19 of the Act, a "native location" included, amongst others: (*a*) any land granted or reserved by or on behalf of the Crown for the habitation or use of native communities; (*b*) Crown land occupied by natives under communal conditions, other than land for which rent is payable to the Government.

44. Section 19 of the Act.

45. *Vlotman supra,* at 216.

Two years after Vlotman's successful appeal, a case similar in some respects but subtly different in others, was heard in the Eastern District Local Court. In 1936, John Martin appealed his conviction for non-payment of the general tax.[46] Martin had never paid the tax and in the lower magistrate's court had argued unsuccessfully that he was not liable to pay because he was of partial European descent. In the original lower court case the magistrate held that there was a reasonable doubt as to whether Martin was a "native" as defined, and that he had failed to provide the necessary proof to show that he did not fall within the terms of the definition.

Martin then appealed the decision in the Eastern District Court. His situation was similar to Vlotman's in that neither man lived in a "native location". Martin lived in the town of Port Elizabeth so (unlike Vlotman's case) the legal status of Martin's residence was never in doubt. In 1936, in segregated South Africa, it was self-evident that a large town such as Port Elizabeth – the regional centre of the Eastern Cape – was not a "native location". Only white and Cape Coloured people had the right of permanent residence there. Those Africans who lived in the town were only allowed to do so on a temporary basis, subject to obtaining the necessary permit. The fact that Martin lived in Port Elizabeth meant that the state could not argue that he was "residing in a native location under the same conditions as a native".[47] This meant

46. *John Martin v Rex*, 9 SATC 17.

47. Section 19 of the Act.

that there was only one central issue in the case: was Martin of partial European descent or not?

Citing Mahomed's case of 1930 as a precedent, the three tests of appearance, ancestry and associations were applied.[48] Due to lack of sufficient supporting evidence, Martin failed the ancestry test as far as the court was concerned. He had produced a death certificate – purportedly his father's – in court. However, this document was not accepted because it was contended that there was some doubt whether the person referred to in the certificate was in fact Martin's father. Nevertheless the court could agree that the appearance test ("one of the most important tests in cases of this character") worked in Martin's favour.[49] While admitting that it was always difficult to come to any clear-cut conclusion when assessing appearances, the judge acknowledged that on seeing Martin for the first time "there are certain general appearances in the accused which led me to the conclusion the moment I saw him that he had European blood in his veins".[50]

Regarding the associations test, the court was also prepared to admit that this particular test could be applied in a broader, more flexible way. Associations did not simply mean the people a man mixed with, it also referred to the language he used.

48. *Mahomed supra*.

49. *Martin supra,* at 18.

50. *Martin supra,* at 19.

The man's language, his accent and the language of those he mixed and communicated with, could also be determining factors. The judge had to concede that Martin spoke Afrikaans not as "a native who has learned Afrikaans, but that Afrikaans was his mother tongue".[51] In addition, Martin, who was illiterate, provided a convincing account of the time he had spent living in Cape Town. He could describe the localities where he had lived and could provide a convincing account of coloured cultural life in that city. That account supported his contention that his principal associations were with coloured people and not with Africans.

Martin might not have had acceptable documentary proof of his European ancestry as far as the court was concerned, but it had to acknowledge that his appearance, his mother tongue and his associations pointed to the fact that he was partially of non-African descent. Furthermore he lived in Port Elizabeth and not in a "native location". The Crown could not categorise Martin as a "native" or aver that he "resided in a native location under the same conditions of a native". As a result, the judge had to conclude that Martin had a "degree of European descent" and therefore his appeal was allowed and his conviction and sentence set aside.

51. *Martin supra,* at 20.

## 4.4 Two poll tax trials: The Zanzibari community of Durban and the *Fakiri v Rex* cases

No one challenged the imposition of the general tax more insistently than one particular individual called Fakiri, a man living on the Bluff in Durban. He refused to pay the poll tax for two consecutive years and was convicted twice for the same offence by the Additional Native Commissioner of Durban. Fakiri appealed those convictions twice in the Natal Provincial Division of the Supreme Court and after losing both his cases in the lower courts, took his case to the Appellate Division in Bloemfontein, the highest court in South Africa at the time.[52]

## 4.5 Zanzibar origins

Fakiri, who spoke Swahili, was born in Durban, as were his parents. His paternal grandparents, however, came from Zanzibar. The arrival of Fakiri's forebears in Durban was one of the ramifications of Britain's abolition of slavery in 1833. By the 1860s, Britain was applying increasing pressure on the sultan of Zanzibar to end the slave trade in the area under his jurisdiction.[53] In May 1873, John Kirk, the British consul general of Zanzibar, wrote to the lieutenant governor of Natal acknowledging that despite British pressure, the sultan still refused to recognise the freedom of slaves

52. Two of the three High Court cases were reported: The Appellate Division case (*Fakiri v Rex*, 10 SATC 45), and the second Natal Provincial Division case (*Fakiri v Rex*(2), 10 SATC 390).

53. Seedat, "The Zanzibaris in Durban", p. 2.

who had been liberated by British ships.[54] This meant that freed slaves could not be permanently relocated anywhere under the sultan's jurisdiction. Liberated slaves, many of whom were children, were also not resettled elsewhere in East Africa because they were considered relatively easy targets for recapture by slave traders.[55] As Natal had a labour shortage at the time, the decision was made to send the freed slaves there.[56]

It was under these circumstances that Fakiri's grandparents were among a number of freed slaves brought to Durban from 1873 to 1880.[57] The first shipload of 113 liberated slaves arrived in Durban harbour on board H.M.S. Briton, in the evening of 4 August 1873.[58] Sixty-three of these passengers were children under the age of 12. The majority were Makua-speakers found in dhows off the northern Mozambican coast, presumably on route to the slave markets of Pemba or Madagascar.[59] From 1873 to 1880 a total of 508 liberated slaves arrived in Durban.[60] By 1880, however, the

54. Seedat, "The Zanzibaris in Durban", p. 5.

55. Oosthuizen, "Islam among the Zanzibaris of South Africa", p. 305.

56. *Ibid*. Some liberated slaves were also sent to Freetown, Sierra Leone.

57. Seedat, "The Zanzibaris in Durban", p. 22.

58. *Ibid*., p. 7.

59. Kaarsholm, "Migration, Islam and Identity Strategies in KwaZulu-Natal", p. 13.

60. Kaarsholm, "Zanzibaris or Amakhuwa?", p. 4.

importation of freed slaves had ended because the sultan of Zanzibar was cooperating fully with Britain's anti-slavery campaign.[61]

In Durban the freed slaves were placed under the jurisdiction of the Protector of Indian Immigrants even though the majority were Makua and were African in appearance.[62] These new African immigrants were indentured under conditions similar to Indian labourers.[63] They served as indentured servants or farm labourers for a five-year period, after completion of which they obtained a "freed pass", entitling them to settle in Natal.[64] Natal officialdom treated the Zanzibaris as a distinct, separate group of people in all official documents. They were referred to as "liberated African slaves" or "freed slaves" in state records.[65] Those designations remained unchanged until the introduction of the Natives Taxation and Development Act decades later.

The majority of the Zanzibaris who arrived in Natal had either been in some contact with Islam or were already Muslims, their conversion to Islam being the result of contact with Arab merchants on the east coast of Africa.[66] The Muslim Zanzibaris not

61. Seedat, "The Zanzibaris in Durban", p. 23.

62. *Ibid*., p. 7.

63. Kaarsholm, "Migration, Islam and Identity Strategies in KwaZulu-Natal", p. 14.

64. Oosthuizen, "Islam among the Zanzibaris of South Africa", p. 306.

65. Seedat, "The Zanzibaris in Durban", p. 17.

66. S. v. Sicard (1981) "The 'Zanzibaris' in Durban, South Africa", *Institute of Muslim Minority Affairs Journal*, Vol. 3, No. 1, pp. 128–137.

only had a unique official status, they also tended to keep themselves separate from the local Zulu population. Their distinct identity was further entrenched when seven Muslim Indian merchants purchased 43 acres of land at King's Rest on the Bluff, south of Durban, in 1899.[67] The land provided 96 plot settlements for Zanzibaris who had completed their indenture. In addition, sites were allocated for a mosque, madrasah and cemetery for the former slaves. It was here that gradually over the years, Durban's Zanzibaris established themselves as a community. By 1916 control of the King's Rest land passed to the Juma Musjid Trust – owners of the Juma Musjid mosque in Durban's Grey Street along with other valuable commercial property.[68] The King's Rest community was mixed, comprising Zulus, Basutos and Africans from Zanzibar and (what was then) Nyasaland. They lived under a chief, Paul Mole, whose mother was born in Zanzibar. The group consisted largely of Muslims or Muslim converts. Fakiri himself had married a Zulu woman according to Islamic marriage rites.

## 4.6 The Zanzibari community and the General Tax of 1925: Early exemption appeals

The Zanzibaris' official status as "liberated slaves" remained unchanged until 1925 and the introduction of the Natives Taxation and Development Act. Their status in terms of the Act – whether or not they were to be regarded as "natives" – was questioned early on. On 30 November 1925, one month before the new law was due

67. Seedat, "The Zanzibaris in Durban", p. 30.

68. *Ibid*., p. 31.

to be enforced, JBM Hertzog, in his capacity as Minister of Native Affairs, received seventeen petitions from men with "liberated slave" status. The covering letter from RC Samuelson (presumably an attorney) requested the favourable review of their applications for exemption from the poll tax.[69] To bolster their cases, each petitioner included an attached certificate from the office of the Protector of Indian Immigrants in Durban. That document bore the man's thumbprints, identified him and stated that he was either a "liberated slave", or the descendant of liberated slaves "brought here by Government about 40 years ago and handed over to this Department".[70]

The petitions, drafted on the men's behalf because most of them were illiterate, followed a similar format with the necessary adjustments made for varying personal details. For example, one petitioner by the name of Murrizuck attested that he was born near Lake Nyasa before being "taken by the Arabs and sold to other Arabs at Zanzibar" and from Zanzibar was then "liberated from slavery by the British Government" (see Figure 2, page 151).[71] Another man, Jassika, described how his parents – also from the Lake Nyasa area – arrived in Natal under the same circumstances.[72] Similarly, Anthony's petition noted that he was the son of liberated

69. NTS 2510, file 87/293 (I), R.C. Samuelson to the Minister of Native Affairs, 30 November 1925.

70. *Ibid*., Petitions addressed to the Minister of Native Affairs, 28 November 1925. Certificates from the office of the Protector of Indian Immigrants, dated 30 May 1925, were attached to each petition.

71. *Ibid*., Petition by Murrizuck addressed to the Minister of Native Affairs, 28 November 1925.

72. *Ibid*., Petition by Jassika addressed to the Minister of Native Affairs, 28 November 1925.

slaves who had been brought to Natal decades earlier. He claimed that his parents came from Dar es Salaam where they too had been liberated from slavery by the British authorities.[73] Another petitioner, Marranso Maraintapura, noted that his place of origin was "across the Mluli River, which is beyond the Zambezi River".[74]

The men provided additional details regarding their marital status and places of residence. Pain Mtarua was unmarried and lived in a wattle and daub house with a corrugated iron roof that had one bedroom, a dining room and a kitchen.[75] Anthony had married a local African woman and lived in a "one-roomed square house of wood and thatch, with the kitchen standing apart from it".[76] Marranso Maraintapura was "married to a Mozambique woman, in the Mahommedan Church, across the Mngeni [River]" but she had since died leaving no children.[77]

Personal details aside, the petitions had almost identical conclusions: "I humbly and respectfully say that I am not a Native as defined in the Laws of the Union of South Africa, that I have nothing in common with the Natives of this land, nor do I follow

73. NTS 2510, file 87/293 (I), Petition by Anthony addressed to the Minister of Native Affairs, 28 November 1925.

74. *Ibid*., Petition by Marranso Maraintapura addressed to the Minister of Native Affairs, 28 November 1925.

75. *Ibid*., Petition by Pain Mtarua addressed to the Minister of Native Affairs, 28 November 1925.

76. *Ibid*., Petition by Anthony, 28 November 1925.

77. *Ibid*., Petition by Marranso Maraintapura, 28 November 1925.

their customs and manner of living". Each petitioner went on to maintain that he was "not a Native as contemplated in the Native Taxation and Development Act of 1925 and humbly pray to be exempted therefrom".[78]

The petitions were forwarded, as was customary, to the Secretary of Native Affairs. He was of the opinion that the petitioners appeared to be "natives" but asked for a second opinion from the Chief Native Commissioner in Pietermaritzburg.[79] The status of the petitioners, according to the commissioner, was defined by a Natal law of 1888, in terms of which "they are undoubtedly liable for payment of general tax, I therefore am of the opinion that the petitions should be refused".[80] On 2 January 1926 the petitioners' attorney was notified by the SNA that they appeared "without exception to be Natives as defined in the said Act" and it would not be possible to exempt them from payment of the tax.[81]

In the ensuing years, some members of the Zanzibari community paid the tax, while others did not. Despite the secretary's ruling in 1925, those Zanzibaris who managed

78. NTS 2510, file 87/293 (I). All 17 petitions concluded with similar wording.

79. *Ibid.*, SNA to CNC Natal, 12 December 1925.

80. *Ibid.*, CNC Natal to SNA, 19 December 1925. A native in terms of Law 14 of 1888 (Natal), sec. 1, included: "… all members of the Aboriginal Races or Tribes of Africa south of the Equator, including liberated Africans, commonly called Amandawo …" See NTS 2507, file 87/293 (G) in "*List of Legislative Enactments in which reference is made to Races and their Classifications as furnished by the Legal Advisor to the Group Areas Board"*, 8 and 22 January 1958.

81. *Ibid.*, SNA to R.C. Samuelson, 2 January 1926.

to avoid paying the tax did so, according to Seedat, on the basis that they were from the island and were partly of Arabic extraction.[82] Presumably, for some local Natal officials, their ancestral origins were enough to exclude them from the provisions of the Act. Signed chits from the Protector of Indian Immigrants proclaiming their status as liberated slaves, or descendants of liberated slaves, were used in support of their exemption claims. This tactic worked temporarily but at some point, possibly in the mid-1930s, the tax authorities began to view this avoidance strategy in an increasingly critical light. To exacerbate the situation, a number of local Africans were also claiming to be Zanzibaris in an attempt to evade the tax.[83]

### 4.7 The Fakiri court cases

The issue of the Zanzibaris' status remained unresolved until 1938 when Fakiri challenged the imposition of the tax. With the financial support of the Juma Musjid Trust and Indian Muslims, Fakiri took his case to the country's highest court of appeal: the Appellate Division in Bloemfontein.[84]

Fakiri had in fact paid the poll tax for the first ten years of its existence, from 1926 to 1935. He then made a decision not to pay the poll tax in 1936 and was accordingly

82. Seedat, "The Zanzibaris in Durban", pp. 35–36.

83. *Ibid*., p. 35.

84. Kaarsholm, "Migration, Islam and Identity Strategies in KwaZulu-Natal", p. 16.

convicted of non-payment by the Additional Native Commissioner in Durban. Fakiri then appealed unsuccessfully against his conviction in the Natal Provincial Division of the Supreme Court.[85] His appeals must have attracted wider attention in the community because funds were raised by sympathetic Durban Muslims to enable him to take his case to the Appellate Division in Bloemfontein.[86]

Fakiri's legal team's approach, in the Appellate Division, was to first establish that his ancestral origins lay in Zanzibar. His paternal grandmother gave evidence to that effect. She explained how she and her husband (Fakiri's paternal grandfather) were children when they were captured by Arab slave traders. They had been rescued at sea by a British ship. After being returned to Zanzibar, which she stated was her home, they were taken to Durban as liberated slaves. The Assistant Protector of Indian Immigrants in Durban was also called on behalf of Fakiri to give some historical background regarding the arrival of freed slaves between 1873 and 1880. In the earlier, lower court cases, the Crown had queried whether Fakiri's origins were in fact in Zanzibar. Witnesses had been produced to testify that his ancestral origins were in Mozambique and it was claimed that the language he spoke was not Swahili but a Mozambican dialect, possibly Makua. By the time the case reached the Appellate

85. *Fakiri v Rex*, 10 SATC 45 at 45.

86. Seedat, "The Zanzibaris in Durban", p. 37.

Division, however, the Crown was prepared to accept that Fakiri spoke Swahili and that his grandparents had in fact come from Zanzibar.[87]

With his Zanzibar origins no longer in question, the Fakiri defence team argued that by definition, he could not be a "member of an aboriginal race or tribe of Africa". They argued that Zanzibar, an island some 22.5 miles from the mainland of Africa, was not part of Africa. If his Zanzibar origins were not in doubt, and if the island was not part of Africa, Fakiri did not fall within the definition of "native". According to his legal team, there was no reasonable doubt on this. If there was no reasonable doubt about his status, then there was no onus on him to prove anything. It was, instead, up to the Crown to prove that the inhabitants of Zanzibar belong to "an aboriginal race or tribe of Africa"; and according to Fakiri's legal team, there was no such evidence.[88]

Ultimately, the judges disagreed. While they were prepared to accept that Zanzibar might not be a part of Africa, without making a definitive decision on the matter, they did not accept that being born in Zanzibar is *prima facie* evidence that a person could not be a "native" of Africa. Zanzibar had for years been the *entrepot* for many East African ports. By 1873, it was highly likely that some of Zanzibar's inhabitants were of mainland African descent, along with the other island inhabitants of Arabic and

87. *Fakiri supra,* at 46-47.

88. *Supra,* at 47-48.

Malay origin. Therefore, as far as the court was concerned, there was indeed a reasonable doubt about Fakiri's ancestral status. That doubt meant that it was Fakiri's responsibility to prove that he was not a "native".[89]

With his ancestry in doubt, Fakiri's appearance and associations became the focus of the court's attention. The assistant Native Commissioner called by the Crown stated: "The accused I say is a Native".[90] The Additional Native Commissioner who had originally convicted Fakiri had placed on record that "the accused resembles in all respects an aboriginal native of Africa". The chief under whom the community fell, Paul Mole (who also acted as tax collector) stated: "To me the accused looks like all other natives".[91] With regard to his associations, the Appellate Division judge noted that Fakiri lived with a Zulu woman and worked among Africans. Ultimately, the fact that he originated from Zanzibar; the fact that he spoke Swahili; and the fact that he was a Muslim, did not assist him. He appeared to be African, he associated with Africans, and with no other evidence in his favour, he lost his case. He was a "native" as far as the Court was concerned and had to pay the 1936 poll tax.[92]

89. *Fakiri supra,* at 47–48.

90. *Supra,* at 49.

91. *Supra.*

92. *Supra,* at 50.

However, Fakiri and Durban's Zanzibari community refused to give up. When the 1937 tax became due, Fakiri again refused to pay. Yet again, he was convicted of non-payment by the Additional Native Commissioner and, once again, he appealed to the Natal Provisional Division of the Supreme Court.[93] In this new appeal, Fakiri brought forward new evidence: the fact that his great-grandfather was not only from Zanzibar but was an Arab. All other facts in his case remained unchanged. It was on this new evidence, of a non-African strain in his ancestry, that his appeal was now based. Fakiri's mother and another elderly woman in the Zanzibari community attested to this new fact, but Fakiri's defence team did not rely solely on this evidence. A Crown witness, Osman Mustapha, also declared that Fakiri's great-grandfather was an Arab. The court decided to accept the new evidence on the basis of the witnesses' statements. Fakiri's legal team then argued that the sole test in this new case was whether he was of pure African descent. They argued that if he was not of pure African descent, then his appearance would be irrelevant, as would his associations and habits of living.[94]

Once again, Fakiri's defence was unsuccessful. The three hurdles of ancestry, appearance and association were used to undermine his case. As far as the court was concerned, it was inconceivable that a person could avoid the tax when, firstly, they

93. *Fakiri v Rex*(2), 10 SATC 390.

94. *Fakiri(2) supra,* at 392.

were predominantly of African ancestry; secondly, appeared to be African; and thirdly, lived with and among Africans:

> [The] legislature must have been aware that there are living in the Union many thousands of individuals who look like natives, live as natives do, but whose blood contains at least a trace and often more than a trace of blood other than those of the pure aboriginal races of Africa.[95]

The case of *Tshwete*[96] was cited as direct authority against Fakiri. Like Fakiri, Tshwete had mixed racial ancestry. As outlined in paragraph 4.3 above, Tshwete was the illegitimate son of a white father and African mother. However, he spoke Xhosa and had gone through the Xhosa circumcision ceremonies. He had also married an African woman. Those factors were enough to sway the case against him.

The tests of "appearance, preponderance of blood and habits of life" were used against Fakiri yet again.[97] It was on these three criteria that Fakiri lost his final appeal. The fact that his great-grandfather was an Arab did not help him. As far as the court was concerned, he had "a preponderance of African blood" and he looked African. Those factors, together with the fact that he had married an African woman indicated that he was a "native" as defined. The defeat represented a setback not only for Fakiri but for the entire Zanzibari community of Durban as well. Their legal status was at stake in Fakiri's appeals. No longer under the jurisdiction of the Protector of Indian

95. *Supra* at 395.

96. *Tshwete supra*.

97. *Fakiri(2) supra,* at 395.

Immigrants, they were now effectively in the same official position as indigenous Africans in South Africa. The adverse legal implications of the case were considerable. Fakiri and others in his community were subsumed under the administration of the Native Affairs Department along with all other Africans in the country.

## 4.8 Summary

This chapter explores the Supreme Courts' approach to dealing with racial classification for the purposes of the general tax. Lower-level officials such as policemen, Native Commissioners and magistrates, often had to make a "rapid, if not on-the-spot, judgement about a person's racial type, drawing on readily accessible 'facts' of the situation".[98] High Court judges, on the other hand, could take a more measured approach. However, they too were operating under severe legal constraints. Racial legislation in the country was confusing and often contradictory. The tests that the judiciary chose to use, which were founded on case law, had limitations of their own. The courts could arrive at no hierarchy of importance in applying the tests of ancestry, appearance and associations. In some cases, failing one test was enough to ensure that a man was classified as a "native",[99] in others, failing two tests was required.[100] Testing a man's racial lineage or ancestry was not a realistic option in most

98. Posel, "Race as Common Sense", p. 93.

99. *Tshwete supra*, at 67.

100. *Mahomed supra*, at 63.

cases. The onus was on the African defendant, or appellant, to prove that his lineage took him out of the "native" classification. That onus was one that was difficult to discharge. Birth certificates of parents and grandparents were frequently unavailable, or simply did not exist. Applying the tests of appearance and association, on the other hand, meant entering a subjective area of appraisals and opinions.

All the conundrums of racial classification were played out in the cases of *Fakiri v Rex*. In those cases the tax became a rallying point for one of the smallest minority groups in the country: the Zanzibaris of Durban. Fakiri's challenge represented more than one man's objection to paying a £1 poll tax; it constituted an attempt to maintain the Zanzibari community's status as a distinct official entity, one that was separate from the general African community. To lose the case meant that the status of the Zanzibaris as liberated slaves under the jurisdiction of the Protector of Indian Immigrants, was lost. They would then, for official purposes, be regarded as "natives". That meant being required to carry pass books and being subsumed into South Africa's broader racial classification under the control of the Native Affairs Department.[101] The case was thus an unsuccessful bid to wrest the best possible official status for a community, in a country where racial classifications pervaded all aspects of life.

101. Seedat, "The Zanzibaris in Durban", p. 37.

While this chapter explores the High Courts' attempts to determine the racial status of individual men, the next chapter investigates muddled official efforts (other than the legislature and judiciary) to deal with entire categories of men who were not easily classified within the terms of the Natives Taxation and Development Act.

# CHAPTER FIVE

# "Hottentots, Bushmen and Korannas": Differentiation and Discrimination in Circular 87/293

> *There is going to be difficulty in collecting this tax, and there is going to be a considerable amount of dissatisfaction caused.*[1]

## 5.1 Introduction

The Natives Taxation and Development Act came into effect on 1 January 1926 and from the outset its central definition of who was classified as a "native", caused practical difficulties for state officials who were tasked with implementing and enforcing the new law. The object of the tax was clear enough: its intention was "to provide additional funds for the development, education and local government of natives".[2] The segregationist state saw the Act as an opportunity to compel Africans to fund their own separate education and governmental costs. This was a tax to be imposed exclusively upon Africans. Citizens classified as "coloured" were excluded from the Act's ambit – although they were still subject to income tax and various local taxes.[3]

In the previous chapter the court cases of individual men whose legal status as "natives" was in doubt, were explored. Uncertainty regarding the poll tax's racial

1. House of Assembly, *Parliamentary Debates*, 25 June 1925, C.B. Heatlie, MP for Worcester, col. 4986.

2. Preamble to the Natives Taxation and Development Act, No. 41 of 1925.

3. The Income Tax Act, No. 40 of 1925 was enforced at that time.

definition, however, was not confined to isolated individuals. Significant segments of the Union's population did not fit neatly into either one of the racial categories of "native" or "coloured". How were whole groups of men who were at the margins of the definition, to be dealt with? A racially-based law was always going to be inherently problematic to apply, no matter the precision of its drafting. It was the responsibility of the Native Affairs Department to deal with this issue. This chapter investigates the responses of magistrates to a departmental directive that explicitly excluded particular groups from the ambit of the Act – a directive based on expediency rather than the precise wording of the law. The chapter also examines the problems that arose concerning the Griquas, a group whose tax status was initially ignored, both in the legislation and in departmental circulars.

## 5.2 The definition of "native": Problems and unintended consequences

Six months after the introduction of the new tax, it had become clear to the Native Affairs Department that the definition of a "native" was too broad. At the time it simply included any man who was a "member of an Aboriginal race or tribe of Africa".[4] That wording implied that groups such as the Khoi and San – whom the state had no intention of taxing – fell within the terms of the new Act. These groups were loosely referred to as coloured people, but were indigenous to Africa and therefore fell within the statutory definition.

4. Section 19 of the Act.

The responsibility of resolving the matter fell to a key government figure: Major John Frederick Herbst, the Secretary of Native Affairs (SNA). The vast majority of correspondence concerning problems and queries relating to the tax went through his office and was dealt with by him personally, or in his name. Herbst was appointed by the Prime Minister, JC Smuts, in 1923 and had a formidable reputation as a trouble shooter and a technocrat.[5] Dubow points out that his appointment was unusual in that unlike previous SNA's he had not worked his way up through the ranks of the Cape administration.[6] The son of a Prussian mercenary, Herbst began his civil service career in the country districts of the Cape in the 1890s. That was followed by a period working as a magistrate in the Transkei. In 1908-9, he came to the attention of the Prime Minister of the Cape Colony after he tracked down and negotiated a ceasefire with Simon Kooper, the rebel Nama leader, in Bechuanaland. His reputation was further enhanced when, as Secretary for South West Africa (now Namibia), he was responsible for the organisation of that territory's administration. By 1919 he had been awarded a CBE by the British Crown.[7]

As Secretary of Native Affairs, it was Herbst who had to deal with the state's inadvertent inclusion of Khoi, San and Koranna men within the terms of the new tax Act. To rectify the matter, he dispatched a circular on 3 July 1926 to all receivers of

5. Dubow, *Racial Segregation and the Origins of Apartheid*, p. 86.

6. *Ibid*.

7. *Ibid*. CBE: Commander of the Most Excellent Order of the British Empire.

revenue across the Union.[8] The circular, officially the Identical Minute No. 87/293, provided further clarification on who fell within the definition and who did not (see Figure 3, page 152):

> With reference to the definition of 'Native' in Section 19 of the above Act, I beg to inform you that, while it is recognized that in terms of the definition any full-blooded Hottentot, Bushman, Koranna or native of similar race … should be regarded as a 'native', nevertheless, in view of the fact that very few of the individuals now commonly classed as belonging to these non-Bantu races are without a strain of European blood, which would exclude them from the definition and from liability of tax, it is considered that the administration of the Act should in this respect be based on a liberal interpretation and that in consequence the persons generally described as Hottentots, Bushmen, Korannas, etc., should not be regarded as natives and should not be called upon to pay taxes. The few pure-bred individuals who might escape liability as a result of this policy will make little or no difference to the total amount of tax collectible.[9]

The departmental ruling to exempt "Hottentots, Bushmen and Korannas" was therefore a pragmatic, administrative decision. The circular's assumption that the great majority of these men had some European ancestry – without any supporting evidence – meant that they were excluded from the Act's provisions.

While ostensibly the circular clarified matters for district officers, it created its own problems. Before long, the liberal interpretation that had been recommended was

8. National Archives, Pretoria, UG, Records of the Union Department of Justice (hereafter JUS) 895, file 1/420/25, Department of Native Affairs, Identical Minute No. 87/293, 3 July 1926.

9. *Ibid*. The circular included a reminder to officials that the exemption for "Hottentots, Bushmen and Korannas" would not apply to any man "who in the opinion of the receiver is residing in a native location under the same condition as a native".

taken further than the department intended. The magistrate of Beaufort West, for instance, took the decision to exempt African men who had largely abandoned traditional tribal life and lived among coloured people in the predominantly mixed-race areas of the district. His decision surfaced after the Surveyor of Inland Revenue, in Cape Town, requested a projection of general tax collections in the Beaufort West district for 1926.[10] The national census, conducted five years earlier, indicated that there were approximately 650 adult African men living in the district, which led to an estimate of £650 being raised in the first year that the tax was levied.[11] By October 1926, however, only £10 in tax revenues had been collected in the district. The magistrate reported that there were virtually no Africans in the area "living communally, retaining all the native customs and mode of life and maintaining connections with native tribes or locations of natives". They had, he said, "thrown in their lot with the Cape Coloured".[12] According to the magistrate's interpretation of the Act and the departmental circular, there were practically no African men in the district who were "natives" as defined.

The shortfall in projected tax revenues did not go unnoticed. The Commissioner for Inland Revenue noted that:

10. NTS 2507, file 87/293 (G), Surveyor for Inland Revenue to Commissioner for Inland Revenue, 22 October 1926.

11. *Ibid*.

12. *Ibid*.

> the yield of tax in the non-native districts of the Cape Province will fall considerably below the revenue estimate if the exclusion from liability of Hottentots and the like is to be extended also to Bantu natives who have abandoned their native mode of living and severed connection with their tribes and chiefs.[13]

The loss of tax revenues had to be curbed. The SNA was notified that district officers were acting outside the law by not collecting tax from men who fell within the definition of "native": "It would appear that a very wide view is being taken of the opinion expressed in your identical minute 87/293 of the 3rd July last".[14] The Department of Inland Revenue requested the immediate issue of a further minute to amend and clarify the matter. By the end of November 1926, the amending circular was duly dispatched to all receivers of revenue. It read: "Bantus of pure blood, whatever their mode of living, are not to be regarded as excluded from the definition of 'Native' under the above Act".[15] The receivers were informed that the crucial distinction was one of race (see Figure 4, page 153). The fact that some men "of pure Bantu stock may have relinquished tribal customs and habits or are living under civilized or party civilized conditions" did not, in itself "free them from liability under the Act".[16]

13. NTS 2507, file 87/293 (G), Surveyor for Inland Revenue to Commissioner for Inland Revenue, 22 October 1926.

14. *Ibid*., Commissioner for Inland Revenue to SNA, 16 November 1926.

15. *Ibid*., Department of Native Affairs Identical Minute No. 87/G/293, 30 November 1926.

16. *Ibid*.

Despite the clarification, the secretary's original circular proved to be a constant source of queries and complaints, particularly from magistrates in the northern and eastern areas of the Cape, where many men of uncertain status were located. Magistrates had to come to terms with the fact that a racial tax, in its numerous borderline cases, would be messy and intractable to apply.

Towards the end of October 1926, the magistrate of Phillipstown some 56 kilometres northeast of De Aar, inquired whether "persons one of whose parents (generally the father) was of pure Bantu stock while the other was of a Hottentot, Bushman or Griqua type are to be regarded as natives for the purpose of taxation?". According to the magistrate there were many men in the district who were generally regarded as Africans, and in appearance they were easily distinguishable from the Khoi or other exempted racial groups "but at the same time they speak only Dutch and have abandoned all native customs and modes of living".[17] These men, the magistrate went on to point out, also tended to marry African women rather than those who would be classed as coloured people. He also added that prior to the introduction of the poll tax these men had preferred to regard themselves as African but following its introduction they claimed to be of mixed-race background to benefit from the potential exemption.[18]

17. NTS 2507, file 87/293 (G), RM Phillipstown District to SNA, 28 October 1926.

18. *Ibid*.

Major Herbst, the Secretary of Native Affairs, without providing reasons, replied that he thought the men the Phillipstown magistrate had referred to should fall within the terms of his Identical Minute.[19] In other words, they were to be categorised as Khoi, San or Koranna and therefore should not be required to pay the tax. Presumably their mixed racial ancestry and the fact that their first language was Afrikaans, outweighed the fact that they were African in appearance. These factors were probably enough to persuade Herbst that the men in the Phillipstown district fell within the terms of his circular.

The departmental ruling that "Hottentots, Bushmen and Korannas" should be excluded from the ambit of the new Act also created problems for officials in districts beyond Phillipstown. Almost 300 kilometres to the north, in the Hay district, the Superintendent of Natives reported having problems deciding "where to draw the line among the different classes of aboriginals".[20] Similarly, by December of 1926, Douglas Hearn, the magistrate of Hopetown, a town on the Orange (Gariep) River at the northern border of the Cape Province, complained to the Native Affairs Department that the Identical Minute was causing numerous problems. It was, he said, a matter that called "for much knowledge and experience of the Native Races to decide exactly to which class each Native belongs". In his opinion it would lead to a

19. NTS 2507, file 87/293 (G), SNA to RM Phillipstown District, November 1926.

20. *Ibid*., Superintendent of Natives, Hay District to RM Hay District, 23 March 1927.

great dissatisfaction and "much unfairness and injustice" if the tax was collected from some workers and not others when they were all living together on farms under exactly the same conditions.[21]

Initially, Hearn had tried to avoid making the specifics of the circular generally known because he felt that all African men in the district would claim membership of an exempted racial group. White farmers, on learning of the terms of the Identical Minute, decided that most, if not all the men working for them belonged to an exempted community, presumably because many farmers paid the tax on behalf of their workers.[22] The magistrate's solution to this problem was simple: tax all the adult men in his jurisdiction who were not white. Hearn then placed the onus on the taxpayer to prove that he belonged to one of the exempted groups. If proof could not be provided, the man was liable to pay the tax. The magistrate acknowledged that in the vast majority of cases no proof – that would satisfy him – could be produced, and thus the majority of men in the Hopetown district were obliged to pay the tax.[23]

Hearn's decision to disregard the circular's instructions in this manner was one that could not be sanctioned by the Native Affairs Department. Major Herbst replied to the magistrate in curt terms, informing him that taxes had been collected from "non-

21. NTS 2507, file 87/293 (G), RM Hopetown District to SNA, 8 December 1926.

22. See chapter six for a full discussion of the tax's implications for white farmers.

23. NTS 2507, file 87/293 (G), RM Hopetown District to SNA, 8 December 1926.

Bantu aboriginals" in his district, an action that conflicted with the departmental directive:

> … were it possible to treat your district separately it might be found more convenient to collect tax from the non-Bantu aborigines, in order to avoid the friction referred to …[but] such isolated action is not feasible, for what is done in one district reacts upon adjoining districts, and any differentiation in the incidence of taxation as between contiguous districts will inevitably cause embarrassment. [24]

The provisions of the minute, the magistrate was told, were "most satisfactory for application to the Union as a whole".[25] There was no alternative but to adhere strictly to the ruling.

The department's reply rankled Hearn, who wrote a letter of protest in July 1927 to the secretary of the Department of Justice in Pretoria, pointing out that it was:

> … almost impossible to carry out the ruling of the Native Affairs Department because of the great difficulty in discriminating in many cases between the Bantu and Non-Bantu Aborigines and in fairness to all parties concerned the Tax was collected in this area from all natives who could not show themselves as belonging to the Non Bantu aborigines.[26]

According to Hearn, his method worked well. "The Tax was collected with good results and with no complaints or dissatisfaction from either employer or Taxpayer".[27]

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24. NTS 2507, file 87/293 (G), SNA to RM Hopetown District, 31 December 1926.

25. *Ibid*.

26. *Ibid*., RM Hopetown District to SNA, 10 January 1927.

27. *Ibid*.

Dissatisfaction only arose, the magistrate pointed out, when it became known how the tax was being collected in other districts. He appealed to the Department of Justice to place a more "equitable interpretation of the Native Taxation Act than did the Native Affairs Department".[28] In his view, if the terms of the Identical Minute were implemented they would lead to "gross injustice and unfairness to the native who is called upon to pay because of the differentiation between the Bantu and Non Bantu aborigines and I respectfully submit that they will have good reason to be dissatisfied".[29]

The magistrate's appeal failed. His letter to the Department of Justice was simply forwarded to the Native Affairs Department for comment; and presumably the matter ended there because no further correspondence on the Hopetown matter is on record. But complaints of this sort did not disappear. By differentiating between different racial groups – taxing some and not others – the Identical Minute proved a persistent cause of reports of dissatisfaction among workers. One year after the Hopetown magistrate had written to the Department of Justice, the magistrate of Kimberley, in April 1928, reported that:

> … we find on farms labourers, who might be classed under 'San' peoples, living alongside and under entirely similar conditions to Natives, doing the same work and drawing the same pay and emoluments, and the one is exempted and the other called upon to pay.[30]

28. NTS 2507, file 87/293 (G), RM Hopetown District to SNA, 10 January 1927.

29. *Ibid*.

30. *Ibid*., RM Kimberley District to SNA, 27 April 1928.

The magistrate noted that there was a great deal of discontent among the men in his district who were obliged to pay the tax.

Reports of this kind were still being sent through more than four years after the circular was issued. In July 1930, the Superintendent of Native Affairs in the Hay district of the Cape Province complained to the Native Commissioner of that town, that African men in his district did not understand why men described as "Hottentot, Bushman or Koranna" should be exempted.[31] As far as they were concerned, the different racial groups should be treated equally. The superintendent pointed out that African men, along with Khoi, San and Korannas were employed on farms and in the Kimberley mines under exactly the same conditions. He went on to say that they inter-married and lived intimately "under the same social conditions" and that the men who were taxed could not understand the reasons for their different treatment.[32]

The departmental circular exempting "Hottentots, Bushmen and Korannas" not only created problems in determining who was included or excluded from the terms of the Natives Taxation and Development Act, it was also inconsistently applied across different districts. In October 1926, the magistrate of Willowmore informed the Native Affairs Department of the "very considerable dissatisfaction" of African men in the

31. NTS 2507, file 87/293 (G), Superintendent of Natives Hay District to RM Hay District, 23 July 1930.

32. *Ibid*.

district as a result of the enforcement of the Act in his jurisdiction.[33] According to the magistrate, men in neighbouring Uniondale were not paying the tax. A pastor in Uniondale had petitioned the local magistrate successfully to exempt all African men in the district from paying the general tax – presumably on the basis that they all belonged to one of the three qualifying tribes listed in the department's circular. This was not the only case of inter-district discrepancies. Willowmore's magistrate went on to complain that in the districts of Mossel Bay, Beaufort West, Knysna and George, only a handful of African men had been called upon to pay the tax:

> The natives [in the Willowmore district] are at a loss to understand why one District should be exempted and not others and I can quite sympathise with them in their grievance – I am placed in a very invidious position as both natives and farmers ask why one Magistrate can get his District exempted and not another.[34]

Inconsistent enforcement of departmental instructions could also be verified personally by the magistrate of Kimberley who complained that the decision to exempt Khoi, San and Koranna men might well lead to a far greater difficulties than ever anticipated. He had tried a case in the agricultural town of Warrenton where he had "not the slightest doubt" that the man appearing before him in court was a "native" as defined, and was therefore liable to pay the general tax.[35] On further investigation, it transpired that the man's brother had been exempted in another

33. NTS 2507, file 87/293 (G), RM Willowmore District to SNA, 26 October 1926.

34. *Ibid*.

35. *Ibid*., RM Kimberley District to SNA, 27 April 1928.

district. Those discrepancies would continue, the magistrate said, "as long as the distinction is made between 'San peoples' and ordinary Natives".[36] The Kimberley magistrate decided to follow the irregular policy of only exempting men who had an obvious strain of European ancestry. That course of action, he had to admit, created a problem for farmers in his district who complained that San people in neighbouring districts were not being taxed, and they were losing labour as a result. In the opinion of the magistrate "the position would be more satisfactory" if the distinction between the various groups was cancelled altogether.[37]

Further inter-district discrepancies were also reported in the Hopetown area. In Hopetown, as shown above, the magistrate had taken the decision to tax virtually all black men in the district, regardless of their racial origin. Some white farmers in the area owned land that straddled district boundaries. When paying the poll tax on behalf of their workers the farmers would send a list of names of their employees (specifying racial grouping) together with a cheque to the receiver of revenue in the neighbouring district. Occasionally these cheques were returned and the farmer informed that payment was unnecessary because the worker/s listed belonged to one of the exempted groups.[38] This, unsurprisingly, led to discontent among those farmers

36. NTS 2507, file 87/293 (G), RM Kimberley District to SNA, 27 April 1928.

37. *Ibid*.

38. *Ibid*., RM Hopetown District to SNA, 8 December 1926.

and workers in the Hopetown district, who had no option but to pay the tax in Hopetown itself.

The decision to exclude "Hottentots. Bushmen and Korannas" from the ambit of the Act also created administrative problems for receivers of revenue. Tax collection centres were designated in particular towns and according to the magistrate of Hopetown, employers and workers were well informed in advance of collection dates:

> I found that in the majority of cases the natives did not put in an appearance but the employers came and paid the tax for them in which case the opinion of the employer as to the tribe of the Taxpayer had to be accepted.[39]

In other words, in such situations it was white farmers, not the district officials, who determined whether men in their employ were subject to the tax or not. It was out of the question, the magistrate said, to expect farmers to send in all their workers with a view to determining to what tribe they belonged. He could not "insist on [all] the Natives, who in many cases live many miles further from town, coming into town to be inspected".[40]

### 5.3 Circular 87/293: A case of outright dissent

The Native Affairs Department circular exempting "Hottentots, Bushmen and Korrannas", had not clarified matters for officials; instead it compounded their

39. NTS 2507, file 87/293 (G), RM Hopetown District to Secretary of Justice, 10 January 1927.

40. *Ibid*., RM Hopetown District to SNA, 8 December 1926.

problems. Differentiating between tribal groups created dilemmas regarding legal interpretation and racial classification; and the circular led to inconsistent implementation and administrative complications. In the years immediately after the Identical Minute was circularised in July 1926, it continued to be a cause of grievances and objections. However in one instance, a district magistrate simply ignored the directive and was quite candid in his dissent.

The original circulation of the minute had not initially come to the attention of Mr E. Jansen, the magistrate of East London in the Eastern Cape. He was on leave at the time and only became aware of the details of the directive early in 1927 after a Khoi man living in the East London municipal township, appeared before him in court. The man had been summonsed because he was unable to produce a tax receipt or certificate of exemption. On being charged he pleaded guilty and was given a suspended sentence on condition that he pay the outstanding tax within six weeks. The tax was duly paid within the stipulated period and that was the end of the matter as far as the magistrate was concerned.[41] The convicted man's place of tax registration was in the rural district of Adelaide, also in the Eastern Cape. Following the conviction in East London, the magistrate of Adelaide informed Jansen that in terms of Identical Minute no. 87/293, the man had been incorrectly convicted: he was a Khoi and therefore not subject to the tax. Accordingly, Jansen was requested to refund the £1 poll tax that had been

41. NTS 2507, file 87/293 (G), RM East London District to SNA, 21 February 1927.

collected. Jansen felt that this request and the terms of the circular underlying it, were an affront to his authority. In a strongly worded letter to the SNA in February 1927, he protested the terms of the Identical Minute and furthermore, he wanted his protest to be brought to the attention of the Minister of Native Affairs:

> If I do as the Magistrate of Adelaide has requested me to do, my official position as the Officer in charge of Native Affairs in this populous native area will be jeopardised beyond retrieve, and I will not be able to hold my head up and retain the respect and affection, which I am proud to say the natives of all races entertain towards me.[42]

Jansen went on to state that if the tax was refunded and if "Hottentots, Bushmen and Korannas" were to be exempted from paying the tax:

> … the Bantu natives will hear of it and cry out at the injustice, and it will be useless for me to say that I am acting on instructions from the Head Office in Pretoria. The Natives know no Head Office, they only know me, and look up to me for justice and fair dealing.[43]

To support his case further, the magistrate, looking at the matter from a political perspective, went on to issue a warning:

> … the ICU is very active here as you no doubt are aware from the regular reports furnished to the Chief Native Commissioner of the Ciskei, and if effect is given to this Identical minute, it will be placing a dangerous weapon in the hands of the agitators, and no one knows where it will end.[44]

42. NTS 2507, file 87/293 (G), RM East London District to SNA, 21 February 1927.

43. *Ibid*.

44. *Ibid*. The Industrial and Commercial Workers' Union (ICU) was founded in Cape Town in 1919, and by 1928 had branches throughout South Africa. See Thompson, *A History of South Africa*, p. 176.

Jansen was also offended by the Identical Minute's assertion that there were few remaining "Hottentots, Bushmen and Korannas" who were "without a strain of European blood".[45] He was prepared to acknowledge that many men from the exempted tribes had a mixed racial ancestry, but in his opinion most were not of partial European extraction. His experience as a judicial officer went back, he said, to 1894. Over the years, thousands of Khoi had appeared before him in court: "I know one when I see him." According to Jansen, "Cape Coloureds", who in many cases did have some European ancestry, were easily distinguished from "Hottentots, Bushmen and Korannas", by an experienced magistrate.[46]

The magistrate concluded his letter to the Native Affairs Department by justifying his outspokenness. Magistrates, he said, had the right to express their views on any official matter "with freedom and candour, and I have done so in this minute".[47] This was followed by the request to have his views passed on to the Minister of Native Affairs. Perhaps most pointedly, the magistrate's letter contained a veiled intimation (confirmed in subsequent correspondence) that he was not going to be bound by the directive and would ignore it:

45. NTS 2507, file 87/293 (G), RM East London District to SNA, 21 February 1927.

46. *Ibid*.

47. *Ibid*.

> I observe that your identical minute does not state that it has been issued by direction of the Minister, and I therefore regard it as an expression of [your] personal opinion merely, that there are now very few Hottentots, Bushmen and Korannas without a strain of white blood.[48]

John Herbst's response to this missive began by stating that the Minister of Native Affairs was made aware of the contents of Jansen's letter and that the minister saw no reason to disagree with the instructions circulated by the department.[49] Not only did the minister give his support, Herbst pointed out, but the circular had also been endorsed by the Select Committee on Public Accounts. The principles underlying the departmental instructions were "thought to be rational and equitable".[50] According to Herbst, parliament had adjudged a poll tax to be the fairest and most effective contribution that African men could make to the state when taking their general economic position into consideration. Other racial groups could, under certain circumstances, also be subject to the tax: "For convenience and parity of principle non-Bantu persons who live among the Bantu in similar conditions" were also liable to pay the tax.[51] Did this not apply, Herbst asked, to the Khoi man who had been convicted in Jansen's court?

48. NTS 2507, file 87/293 (G), RM East London District to SNA, 21 February 1927.

49. *Ibid*., SNA to RM East London District, 22 March 1927.

50. *Ibid*.

51. *Ibid*. See chapter four where this section of the definition is discussed in more detail.

What the secretary did not address was Jansen's central complaint: Why tax one group and not another? He also made no reference to the possible political ramifications that had been raised by the magistrate. In a rare acknowledgement, Herbst did, however, recognise that marginal cases existed and that they were inherently problematic. Cases of this kind, he conceded, were often concentrated in particular regions of the Union. Coloured people, according to Herbst, were easily identified in the Cape Town district "where they derive largely from mixed Asiatic ancestry, but they are less easily identified in the Districts remote from the Cape, where they derive largely from Hottentot or San ancestry".[52] He went on to admit that "Borderline cases are necessarily difficult, but the Minister considers that on the general lines indicated Receivers should with the exercise of discrimination be able to avoid unreasonable controversy".[53] In a caustic rejoinder to the magistrate's assertion that men in his jurisdiction were unaware of a head office in Pretoria, Herbst concluded his letter with a question: "What sort of natives have you who do not know of the existence of a Government?"[54]

Jansen was unsuccessful in getting backing from the Native Affairs Department in Pretoria, but he did manage to garner some unlikely support. The magistrate of

52. NTS 2507, file 87/293 (G), SNA to RM East London District, 22 March 1927.

53. *Ibid*.

54. *Ibid*.

Adelaide, who had originally requested Jansen to refund the tax to the Khoi man, came to his defence. The magistrate, a Mr Anderson, wrote to the SNA in support of Jansen's position, indicating that in his own view, "the ruling that Hottentots, Bushmen and Korannas should be exempt from payment of the tax" would be an "injustice" towards "the Bantu races".[55] Anderson had reported the case of the refund for the Khoi man but in doing so, he said, he was simply doing his duty in carrying out the department's instructions although he did not agree with them:

> The natives in this district are at a loss to understand why Hottentots, Bushmen etc. are exempt from payment of the tax, as indeed I am, and my efforts to explain the reason of their exemption is not, I am afraid, convincing.[56]

As an aside, Anderson pointed out that many farmers and employers approved of the exemptions because the tax was being paid principally by them and not their employees. Should the department decide to reconsider the matter, Anderson made his position clear: "I am in agreement with Mr Jansen that a greater measure of satisfaction will be felt all round by the natives, Hottentots and others if they are <u>all included</u> as liable to payment of the tax."[57]

However, the Adelaide magistrate's request also proved futile. In a curt reply, Herbst informed Anderson that the East London magistrate's representation had been

55. NTS 2507, file 87/293 (G), RM Adelaide District to SNA, 28 February 1927.

56. *Ibid*.

57. *Ibid*. Emphasis in original.

forwarded to the Minister of Native Affairs who had confirmed the validity of the circulated instructions.[58]

Magistrates acted as receivers of revenue in the Cape Province but ultimately they fell under the authority and control of the Department of Justice, not the Departments of Native Affairs or Inland Revenue. If the actions of a magistrate needed regulation, it was the responsibility of the Secretary of Justice to ensure that this occurred. Having replied to Jansen, the SNA then sent a copy of that correspondence as well as a covering letter, to the Department of Justice in Pretoria.[59] The Secretary of Justice was informed that this was the third instance of instructions in the department's circular being ignored. It is unclear whether it was Jansen who was at fault on these three occasions, or whether other magistrates were also implicated. Herbst's letter nevertheless ended with a request: "[M]ay I suggest that Magistrates of your Department be circularised on the subject to avoid further misunderstanding?"[60]

The Secretary of Justice's response is not on record, but whatever it was, it did not alter Jansen's approach to poll tax prosecutions. Less than four months later, on 7 July 1927, a John Bussack, appeared in Jansen's court. As far as the magistrate was concerned, Bussack could be classified as a Khoi and notwithstanding the instructions in Identical

58. NTS 2507, file 87/293 (G), SNA to RM Adelaide District, 31 March 1927.

59. *Ibid*., SNA to Secretary of Justice, March 1927.

60. *Ibid*.

Minute No. 87/293, he was convicted and sentenced for non-payment of the general tax. Jansen suspended the sentence for four months to enable Bussack to earn enough money to pay off his liability. At some point thereafter Bussack absconded, having not paid the tax and Jansen then issued a warrant for his arrest.[61] The exact sequence of events thereafter is not recorded but ultimately Bussack paid the tax. That, yet again, was the end of the case as far as Jansen was concerned.

However, in December 1927, Bussack submitted a claim for a refund in King William's Town in the Eastern Cape, where presumably he was registered. The town's magistrate forwarded the claim to Jansen, who flatly rejected it. In Jansen's opinion Bussack was a "Hottentot" and in his blunt reply said he was unable to "certify the claim for refund" and returned it together with the tax receipt.[62] In his refusal, Jansen made his rejection of the departmental circular explicit: "With regard to Identical Minute No. 87/293 of 3rd July, 1926, I raised the whole question with the Secretary of Native Affairs and intimated that I did not intend to be held by it."[63]

Jansen's defiance inevitably came to the attention of the authorities in Pretoria. Bussack's refund claim, after being rejected by Jansen, was resubmitted – but this time

61. NTS 2507, file 87/293 (G), RM East London District to RM King William's Town District, 12 December 1927.

62. *Ibid*.

63. *Ibid*.

to the Commissioner for Inland Revenue. Early in 1928, the commissioner sent through the claim, along with supporting documents, directly to the Native Affairs Department.[64] According to the commissioner, Bussack was a "Cape Coloured" who had been adjudged by the magistrate of East London to be liable for the poll tax:

> I shall be glad to know what action, if any, you propose to take, or have already taken, in regard to the attitude adopted by the Magistrate. It will not facilitate the administration of the natives taxation measure if Receivers are permitted to set at nought the settled policy of your Department embodied in circular instructions merely because, holding judicial office, they may take a certain view of the law.[65]

By now, Jansen's position had become untenable. John Herbst once again referred the matter to the Justice Department, pointing out "the embarrassment which results from the attitude adopted by the Magistrate of East London".[66] The Secretary of Justice was called upon to compel the magistrate to adhere to departmental policy. The magistrate's right to exercise judicial discretion was not in question, Herbst said, but the judicial and administrative aspects were inseparable and it was "essential in order to discriminate on a uniform basis between the Bantu and Coloured people throughout the Union that there should be co-ordination between the Bench and the Administration".[67]

64. NTS 2507, file 87/293 (G), Commissioner for Inland Revenue to SNA, 17 January 1928.

65. *Ibid*.

66. *Ibid*., SNA to Secretary of Justice, undated.

67. *Ibid*.

Herbst acknowledged that ethnological evidence did not, in every case, support the logic of the policy adopted by the Native Affairs Department. That policy, however, was adopted with a "full appreciation of aspects of the problem including its political ramifications". He pointed out that he had the complete support of the Minister of Native Affairs, who was insistent that the department's rulings should be adhered to by all judicial officers. After all, the circulars had "been loyally accepted by other officers" of the department. Herbst hoped that the magistrate of East London would be prepared to "set aside his personal views and act upon these rulings with the same loyalty to avoid embarrassment to this Department and the District Officers".[68] How the Department of Justice dealt with Jansen is not known but there are no further records of him transgressing departmental policy. Presumably, he was brought grudgingly into line.

Jansen's objection to the departmental circular did have some legal standing. The South African judiciary at that time applied a strict and literal approach to the interpretation of statutes.[69] If the legitimacy of circular 87/293 had been challenged in court, the ordinary meaning of the words in the Natives Taxation and Development Act would, it is submitted, have been assessed and applied. Most men classified as "Hottentots, Bushmen or Korannas" were, in the words of the Act's definition of a

68. NTS 2507, file 87/293 (G), SNA to Secretary of Justice, undated.

69. G.K. Goldswain, "The Purposive Approach to the Interpretation of Fiscal Legislation: The Winds of Change", *Meditari Accountancy Research*, Vol. 16, No. 2 (2008), pp. 107–121.

"native", clearly members of "an aboriginal race or tribe of Africa". A court would in all likelihood have rendered the circular null and void. Therefore, in terms of a literal reading of the wording of the law, these men were also liable to pay the poll tax.[70]

### 5.4 At the periphery: The Griquas and the definition of "native"

The racial definition underpinning the Natives Taxation and Development Act inevitably created a stratum of men who were at its margins. Those cases engendered a range of anomalies and discrepancies that had to be dealt with by the officials assigned to apply and implement the new law. Circular 87/293 addressed the status of three groups: the Khoi, the San and the Korannas. There was, however, a fourth group – the Griquas – to which neither the circular nor the Act made reference.

The Griquas were an Afrikaans-speaking, mixed-race people. They were primarily the descendants of Dutch colonists in the Cape and the indigenous Khoi people; and by the late 18th century had migrated into the interior of the country, eventually settling in an area on the banks of the Orange River, bordering the Orange Free State and the Transvaal. This remote, frontier territory became known as Griqualand West.[71] After

70. The issue was rendered moot when the principal Act of 1925 was amended by section 10 of Act 37 of 1931. The amending section substituted a new definition of a native: "Native" means any member of an aboriginal race or tribe of Africa but does not include a person in any degree of European descent (even if he be described as Hottentot, Griqua, Koranna or Bushman) unless he is residing in a native location under the same conditions as a native.

71. Some Griquas also went on to settle in an area south of the Natal Colony, known as Griqualand East. The majority of archival records concerning the connection between the Griquas and the poll tax emanated from Griqualand West. The focus of this study is accordingly on that region.

the discovery of diamonds in the region in 1867, the territory was subject to territorial claims from the Orange Free State, the Boer Republic to the east. Four years later, Griqualand West was placed under direct British rule. Incorporation into the Cape Colony followed in 1880, and by 1925 the area was part of the Cape Province.[72]

The first problem that district magistrates faced when enforcing the new poll tax, was simply a matter of interpretation: How were Griquas to be classified? Identical Minute no. 87/293 made no reference to the group.[73] Did Griquas fall within the three exempted tribes – "Hottentots, Bushmen and Korannas" – or were they "natives" as defined? Initially magistrates treated Griquas as "an aboriginal race or tribe of Africa" and exacted payment of the poll tax from them. That approach, unsurprisingly, was unwelcome among Griqua men. In September 1926, fourteen Griqua men addressed a petition to the Prime Minister requesting a commission of enquiry into their status.[74] Officials in Griquatown had forced some of them to pay the tax, despite their protests that they were not "natives" as defined. The men were adamant that they were "Coloureds" and therefore not subject to the tax. The petitioners informed the Prime Minister that due to the costs involved they were not in a position to take their case to the High Court. The petition had the support of eight white signatories, from

72. Thompson, *A History of South Africa,* p. 117.

73. JUS 895, file 1/420/25, Department of Native Affairs, Identical Minute No. 87/293, 3 July 1926.

74. NTS 2507, file 87/293 (G), Petition addressed, in Afrikaans, to the Minister of Native Affairs, undated.

Griquatown, who attested that they considered the petitioners to be "Coloureds" and not "natives".[75]

One of the petition's signatories, Jacobus Haai, who was a school principal in Griquatown, addressed a covering letter to the MP for Worcester, in which he complained that he and three other signatories had been compelled to pay the tax.[76] Haai recounted how a local magistrate had reprimanded him in court for his non-payment of the tax and had discharged him on condition that it was paid:

> I had to pay the Tax to avoid imprisonment, and I am now absolutely, as it were, at a loss as to what is Coloured and what is a Native according to the Definition. You have seen me personally, Honorable sir. My father and mother were both Coloured. My home language is Afrikaans.[77]

Haai went on to point out that the Cape education authority had also classified him as a coloured teacher.

The men's petition was forwarded to John Herbst at the Native Affairs Department. Herbst requested clarification from the Griquatown magistrate as to why Haai had been convicted. In response the magistrate, Mr A Campbell, pointed out that Haai was the first signatory on the petition and observed, "It would appear that this man is the

75. *Ibid*., The white signatories included four general dealers, one attorney and a high school principal.

76. NTS 2507, file 87/293 (G), J. Haai to J.A. Stals (MP Worcester), 30 September 1926.

77. *Ibid*., J. Haai to J.A. Stals, 2 October 1926.

instigator of this complaint."[78] According to the magistrate, Haai regarded himself as "a kind of leader" of the group. He had refused to pay the tax and the others "followed his lead in many instances".[79] In his explanation of the conviction, Campbell supplied a three-page annexure outlining the facts of the case and providing reasons for his decision. Haai had claimed in court that he was a Cape Coloured. Witnesses, however, testified that he was a Griqua. Constable Oberholster of the South African Police stated that he had known the accused's mother and father since 1913 and had always taken them to be Griquas. He said they were treated and spoken of, as Griquas. The local Superintendent of Natives, who was also the collector of taxes and had "wide experience with natives", testified that Haai had predominantly African features and could therefore be classified as a "native".[80] Another witness, an elderly woman named Katrina Mowley, testified that she was a Griqua and furthermore, told the court that she knew Haai and was a relative of his. Her son, moreover, had paid the general tax. Mowley did acknowledge that certain Griquas might have some European ancestry, potentially a point that could exempt them from the tax. According to her, some Griquas were described as "Bruin mense" (coloured people) while others were generally referred to as "Swart mense"(black people).[81]

78. NTS 2507, file 87/293 (G), RM Griquatown District to SNA, 27 November 1926.

79. *Ibid*.

80. *Ibid*.

81. *Ibid*.

In convicting Haai, the magistrate found that he met the conditions for poll tax liability: he was over 18 years of age; did not meet any of the exemption criteria, and possessed "the predominating features of an aboriginal native of South Africa".[82] Based on the evidence, Campbell decided that Haai should be classed as a Griqua rather than as a coloured person. As far as Campbell was concerned, Griqua men were "natives", as defined, and therefore fell within the meaning of the Act. In support of his decision, the magistrate cited three High Court cases, pre-dating the Natives Taxation and Development Act, which dealt with the issue of race. Two of those cases ruled that the best test for determining race in the absence of other evidence, was a person's appearance.[83] The third case concluded that while Griquas had some European ancestry, that ancestry was sufficiently small and did not "take them out of the category of natives".[84] To defend his decision, Campbell also pointed out that in earlier, pre-Union legislation, Griquas had been defined as "natives".[85]

The SNA's letter of response to Campbell was succinct. Men classified as Griquas fell within the meaning of the term "Hottentot" as indicated in the Identical Minute no. 87/293:

82. See chapter six for a description of the four categories of African men who could be granted exemption in terms of the Act.

83. *Rex v Willett,* 19 SC 168; and *Queen v Parrott,* 16 SC 452.

84. *Queen v Ellis,* 7 SC 69.

85. Private Locations Act, No. 32 of 1909, Section 2.

> [Griquas] are certainly not of Bantu origin and should accordingly not be called upon to pay taxes unless they are, in your opinion, residing in a Native location as defined in the [Natives Taxation and Development] Act under the same conditions as Natives.[86]

Herbst's explanation that Griquas should be regarded as "Hottentots", for poll tax purposes, was one that he would have to repeat to magistrates in neighbouring regions. One month after dealing with the Haai case, Herbst received a letter from John Brander, a pastor based in Edenburg, a town approximately 180 kilometres to the east of Griqualand West. Brander had paid the general tax for 1926 but wanted to know whether "we Griquas Nation also have to pay the Native Tax Act no 41 of 1925 [sic]"[87]. The secretary forwarded Brander's enquiry to the receiver of revenue of Bultfontein – where the tax had been paid – with the request that he look into the case.[88] The receiver was asked to arrange the necessary refund if indeed, in terms of the departmental circular, payment had been incorrectly enforced against Brander.

The receiver's response was straightforward: "I beg to inform you that I regard J.J. Brander as a native within the meaning of the Act. He belongs to the Griqua race and it does not appear that he has any strain of European Blood".[89] The receiver was aware of the exemption available to a man regarded as a "Bushman or Native of

86. NTS 2507, file 87/293 (G), SNA to RM Griquatown District, 15 December 1926.

87. *Ibid*., J.J. Brander to SNA, 27 January 1927.

88. *Ibid*., SNA to Receiver of Revenue Bultfontein District, 2 February 1927.

89. *Ibid*., Receiver of Revenue Bultfontein District to SNA, 4 February 1927.

similar race".[90] It was not clear, according to him, "whether a Griqua is included in this term – the point is: is a Griqua a type of Bushman? If, however, he has no strain of European blood I concluded that he is liable to pay native tax".[91] On this basis, the receiver concluded that the tax on Brander was indeed correctly imposed.

That conclusion was overruled. Herbst informed the receiver that Griquas were not "natives" for the purposes of the Act, and Brander had to be dealt with accordingly: "If [Griquas] can in any sense be regarded as an aboriginal race, they fall within the meaning of the term Hottentot used in my Identical Minute no. 87/293 of the 3rd July last."[92]

The Native Affairs Department's directive to exempt men classified as Griquas appeared to take effect and queries regarding their tax status began to wane by early 1927. However, it appears that if the Griquas' status as an excluded group was indeed clarified, that exclusion was not easily or consistently applied. John Frylinck, an attorney based in Kuruman (then part of British Bechuanaland) complained to the SNA about the inconsistent application of the Act in the Hay district of Griqualand West.[93] Frylinck acted as a defence attorney at the Postmasburg court for men charged

90. NTS 2507, file 87/293 (G), Receiver of Revenue Bultfontein District to SNA, 4 February 1927.

91. *Ibid*.

92. *Ibid*., SNA to Receiver of Revenue Bultfontein District, 11 February 1927.

93. *Ibid*., J Frylinck to SNA, 3 October 1928.

with non-payment of the general tax. Magistrates had, he acknowledged, a certain amount of discretion to decide each case based on its merits. Nevertheless, this flexibility led to situations where "the Superintendent stands fast and declares that the man is aboriginal which this man certainly is not. The Magistrate thereupon, in some instances, discharges the accused, and in some instances he does not."[94] According to Frylinck, the application of the tax was "very chaotic" in Griqualand. As an example, he cited the case of a man named Dowie, a Griqua, who was "clearly a coloured man".[95] Dowie was found liable to pay the tax whereas in a case that was heard soon thereafter, a man who was "much less in appearance a coloured person, was let off by the Magistrate". It was these seemingly contradictory decisions that Frylinck found disconcerting: "If there was consistency the thing would not be so absurd".[96]

At the request of some Griqua men, Frylinck managed to arrange an interview with the Prime Minister, JBM Hertzog, in September 1928 regarding the application of the Act in Griqualand.[97] The Prime Minister apparently assured him that amending legislation was being considered and this would iron out the various racial

94. NTS 2507, file 87/293 (G), J Frylinck to SNA, 3 October 1928.

95. *Ibid*.

96. *Ibid*.

97. *Ibid*. JBM Hertzog was both Minister of Native Affairs and Prime Minister at the time.

categorisation anomalies.[98] Despite these assurances, Frylinck felt it his duty to bring the Griqualand situation to the attention of the Native Affairs Department. He wrote to the department stressing the fact that "grave injustices" were being suffered by men who should not have been subject to the tax.[99]

Major Herbst's response to the information received from Frylinck and district officials, was largely unsympathetic: "While it is realised that border line cases will present difficulty, it is considered that there should be no difficulty in distinguishing between pure Bantus and the mixed races whatever the origin of the latter may be."[100] As far as he was concerned, the reported problems about who fell within the ambit of the Act and who did not, lacked any real substance. He complained to the magistrate of Griquatown that:

> I am at a loss to see how difficulty arises. The onus is on the accused. A shows that he is commonly called a Griqua, whose mother was a coloured woman. Clearly he is not liable. B shows that he is a Griqua in the common parlance of the District, but his mother's racial status is unproved. If he appears to be a Native, he is liable. The question is neither a question of revenue, nor of scientific ethnology, but one of common sense.[101]

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98. The elimination of anomalies never occurred. The principal Act of 1925 was amended by section 10 of Act 37 of 1931. The terms of circular 87/293 were simply incorporated into the amended definition of "native". "Bushmen, Hottentots, Griquas and Korannas" were explicitly exempted in the new law. The amended definition read as follows: "Native" means any member of an aboriginal race or tribe of Africa but does not include a person in any degree of European descent (even if he be described as Hottentot, Griqua, Koranna or Bushman) unless he is residing in a native location under the same conditions as a native.

99. NTS 2507, file 87/293 (G), J. Frylinck to SNA, 3 October 1928.

100. *Ibid*., SNA to RM Griquatown District, 7 April 1927.

101. *Ibid*., SNA to RM Griquatown District, 28 October 1928.

The decision to exempt Griqua men not only created intractable classification issues, it also brought other, unforeseen problems in its wake. Numerous men who were born and lived in Griqualand started claiming exemption, regardless of their racial origin. By March 1927, the Superintendent of Natives in Griquatown received tax receipts from 18 men demanding refunds. The men lived in Griqualand and claimed to be Griquas. Their requests were forwarded to the local magistrate, but on the superintendent's recommendation the refunds were not granted:

> I may mention that this is the commencement, 'of a try on', for a general refund in this District, as all the natives are now endeavouring to pass themselves off as one of the following exempted tribes viz Griqua, Hottentot, Korana, [sic] Bushmen etc.[102]

The claimants, in the opinion of the superintendent, were Africans who had no trace of European ancestry. He pointed out that the district was in close proximity to what was then Bechuanaland, and many Tswana men from that area were living in Griqualand. There were also populations of Xhosa, Sotho and Damara who had moved to the area years before. All these men, the superintendent complained, were now calling themselves Griquas.

The superintendent's views received official support, towards the end of 1927, from the magistrate of Griquatown. In a letter to the SNA, the magistrate pointed out that:

102. NTS 2507, file 87/293 (G), Superintendent of Natives Griquatown District to RM Griquatown District, 23 March 1927.

> A large number of natives round about here are endeavouring to evade payment of Tax by claiming Griqua nationality and in the majority of instances the claim appears to be based on the fact that they have been born in this Province (Griqualand West).[103]

The magistrate requested a personal meeting with the secretary to discuss the situation, "because the difficult position in this District seems more accentuated than probably in others".[104]

Despite official concerns, the widespread application for exemptions in Griqualand appears to have been reasonably successful. By 1928, tax collections in the district were lower than projected. In a letter to the magistrate of Hay, the SNA remarked:

> …it is, of course, difficult to discriminate in the Districts of Griqualand West, and from the reports of the Public Service Inspector, it is gathered that no very painstaking discrimination has been attempted with the result that revenue conditions are most unsatisfactory.[105]

The Griqualand West area was relatively sparsely populated by Griqua people, the secretary explained, and over the years Tswana people had migrated into the area. The new arrivals, as he put it, might have "a slight dash of San or Griqua blood" and may have "loosely acquired the generic designation Griqua or Koranna, but in reality remain Bantu Natives. These Natives are not intended to escape the incidence of the

103. NTS 2507, file 87/293 (G), RM Griquatown District to SNA, 1 December 1927.

104. *Ibid*.

105. *Ibid*., SNA to RM Hay District, 24 April 1928. Copies of the letter were also sent to the magistrates of Herbert, Kimberley and Barkly West.

tax".[106] He concluded that despite the difficulties officials faced in the district, the necessary differentiation could be achieved if "intelligent discretion" and "common sense" were exercised.[107]

Most queries regarding the tax status of Griqua, Khoi, San and Koranna men had subsided by 1930. Furthermore, Circular 87/293 became law in 1931 by an amendment to the Act's definition of "native".[108] The revised definition specifically excluded "Hottentots, Griquas, Bushmen and Korannas" from the terms of the tax. However, it is unlikely that the new definition would have eliminated all the racial classification problems that officials faced.

### 5.5 Summary

As indicated above, the object of the Natives Taxation and Development Act was "to provide additional funds for the development, education and local government of natives".[109] The tax, accordingly, was only intended to be levied on African men, but this was not clear from the original definition of "native" as promulgated in 1925. The

106. NTS 2507, file 87/293 (G), SNA to RM Hay District, 24 April 1928.

107. *Ibid*.

108. The principal Act of 1925 was amended by section 10 of Act 37 of 1931. The amending section substituted a new definition of native: "Native" means any member of an aboriginal race or tribe of Africa but does not include a person in any degree of European descent (even if he be described as Hottentot, Griqua, Koranna or Bushman) unless he is residing in a native location under the same conditions as a native.

109. Preamble to the Act.

inadvertent inclusion of other racial groups within the Act's definition, through legislative oversight, was an issue that had to be addressed. The Native Affairs Department's decision to exclude "Hottentots, Bushmen and Korannas" from the ambit of the Act through the mechanism of Circular 87/293, therefore, was convenient and expedient.

It is evident from the records in the Pretoria and Cape Town Archives that the instruction to omit "Hottentots, Bushmen and Korannas", from the ambit of the poll tax, instigated numerous problems for officials who had to implement that decision. It was these officials who often had to make prompt decisions regarding men who, for whatever reason, were in some way at the margins of the Act's central, racial provisions. They had the task of specifying "the boundary between supposedly 'pure' and 'mixed' 'non-white' races".[110] Correspondence between the Native Affairs Department and district magistrates reveals the confusion and perplexity that task caused. It also reveals the outright dissent on the part of some magistrates. The circularised decision to exclude "Hottentots, Bushmen and Korannas" from the terms of the Act also engendered a range of unintended consequences: magistrates interpreting the circular too loosely; an inconsistent application across districts; and men making tenuous claims to "Hottentot, Bushman and Koranna" status. The district of Griqualand West was in a sense a microcosm of many racial classification issues.

110. Posel, "Race as Common Sense", p. 90.

Here, the status of an entire group of men – not explicitly dealt with in the statute or in departmental circulars – had to be determined. Those determinations underscored the variable, imprecise and at times, chaotic nature of applying and enforcing a racial law.

In the next chapter, another question of inclusion or exclusion in the terms of the Act is examined; here the focus is on the taxation of farm labourers. The liability of these workers did not rest on issues of racial definition; instead it fell on the limited exemption possibilities the Act provided. Could farm workers' destitution fulfil the Act's legal requirements for exemption? The observations, criticisms and grievances of magistrates, white farmers' associations, African organisations and African men themselves, are recorded. The Native Affairs Department's responses are also examined.

# ILLUSTRATIONS

Pages 150 to 157



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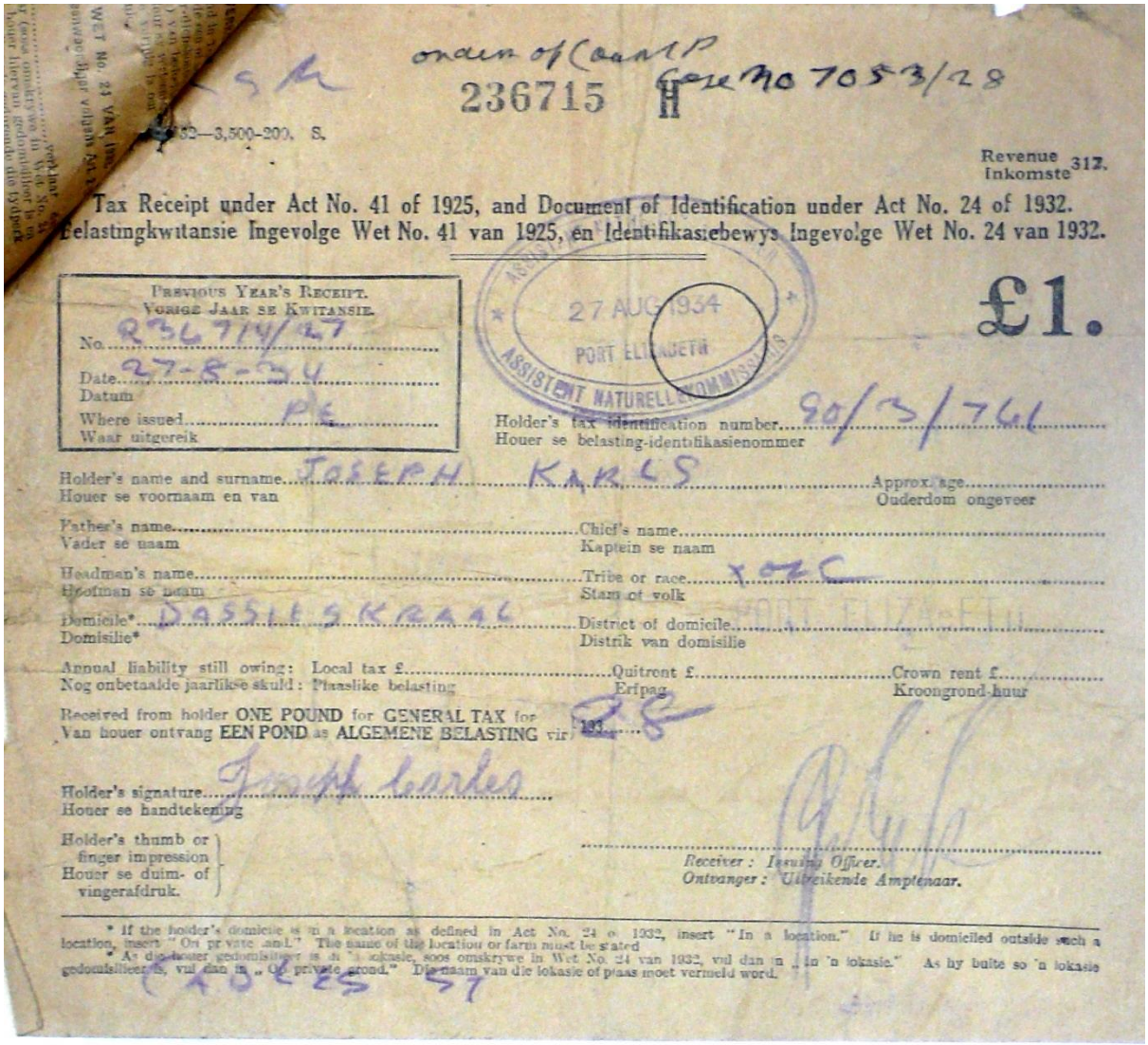
Figure 1: Copy of Tax Receipt.



onder of Coan P Case No 7053/28

236715 H

Revenue 317.
Inkomste

Tax Receipt under Act No. 41 of 1925, and Document of Identification under Act No. 24 of 1932.
Belastingkwitansie Ingevolge Wet No. 41 van 1925, en Identifikasiebewys Ingevolge Wet No. 24 van 1932.

27 AUG 1934
PORT ELIZABETH
ASSISTENT NATUREL-KOMMISSARIS

£1.

Previous Year's Receipt.
Vorige Jaar se Kwitansie.
No. R36714/27
Date 27-8-34
Datum
Where issued PE
Waar uitgereik

Holder's tax identification number 90/3/761
Houer se belasting-identifikasienommer

Holder's name and surname JOSEPH KARLS
Houer se voornaam en van

Approx. age
Ouderdom ongeveer

Father's name
Vader se naam

Chief's name
Kaptein se naam

Headman's name
Hoofman se naam

Tribe or race XOSA
Stam of volk

Domicile* DASSIESKRAAL
Domisilie*

District of domicile PORT ELIZABETH
Distrik van domisilie

Annual liability still owing: Local tax £ Quitrent £ Crown rent £
Nog onbetaalde jaarlikse skuld: Plaslike belasting Erfpag Kroongrond-huur

Received from holder ONE POUND for GENERAL TAX for 1934
Van houer ontvang EEN POND as ALGEMENE BELASTING vir

Holder's signature Joseph Karls
Houer se handtekening

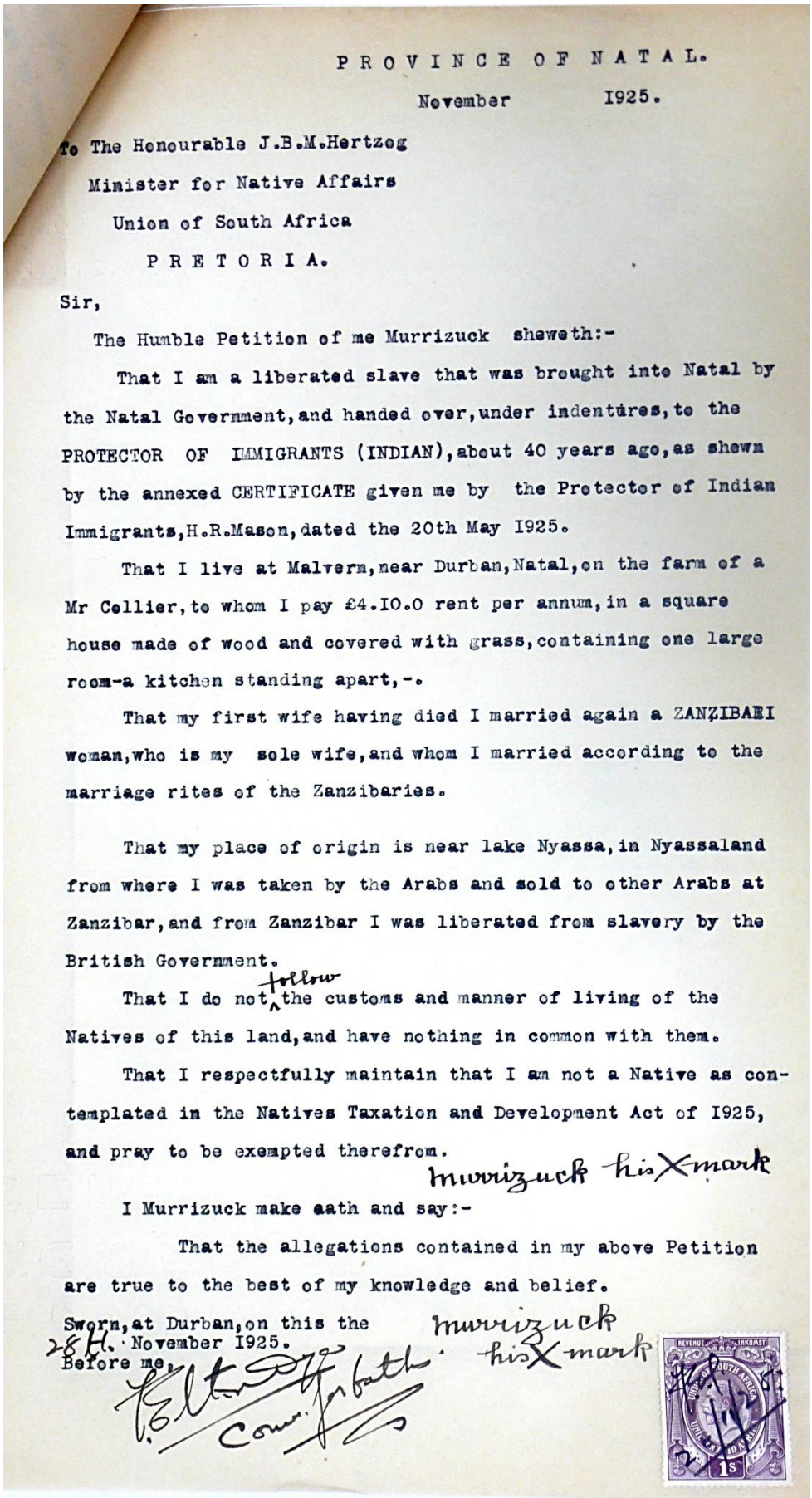
Holder's thumb or finger impression
Houer se duim- of vingerafdruk.

Receiver: Issuing Officer.
Ontvanger: Uitreikende Amptenaar.

* If the holder's domicile is in a location as defined in Act No. 24 of 1932, insert "In a location." If he is domiciled outside such a location, insert "On private land." The name of the location or farm must be stated.
* As die houer gedomisilieer is in 'n lokasie, soos omskrywe in Wet No. 24 van 1932, vul dan in „In 'n lokasie." As hy buite so 'n lokasie gedomisilieer is, vul dan in „Op private grond." Die naam van die lokasie of plaas moet vermeld word.

XOSA 37

Figure 2: Petition by Liberated Slave Addressed to the Minister of Native Affairs.



PROVINCE OF NATAL.

November 1925.

To The Honourable J.B.M.Hertzog
Minister for Native Affairs
Union of South Africa
PRETORIA.

Sir,

The Humble Petition of me Murrizuck sheweth:-

That I am a liberated slave that was brought into Natal by the Natal Government, and handed over, under indentures, to the PROTECTOR OF IMMIGRANTS (INDIAN), about 40 years ago, as shewn by the annexed CERTIFICATE given me by the Protector of Indian Immigrants, H.R.Mason, dated the 20th May 1925.

That I live at Malvern, near Durban, Natal, on the farm of a Mr Cellier, to whom I pay £4.10.0 rent per annum, in a square house made of wood and covered with grass, containing one large room-a kitchen standing apart,-.

That my first wife having died I married again a ZANZIBARI woman, who is my sole wife, and whom I married according to the marriage rites of the Zanzibaries.

That my place of origin is near lake Nyassa, in Nyassaland from where I was taken by the Arabs and sold to other Arabs at Zanzibar, and from Zanzibar I was liberated from slavery by the British Government.

That I do not follow the customs and manner of living of the Natives of this land, and have nothing in common with them.

That I respectfully maintain that I am not a Native as contemplated in the Natives Taxation and Development Act of 1925, and pray to be exempted therefrom.

Murrizuck his X mark

I Murrizuck make oath and say:-

That the allegations contained in my above Petition are true to the best of my knowledge and belief.

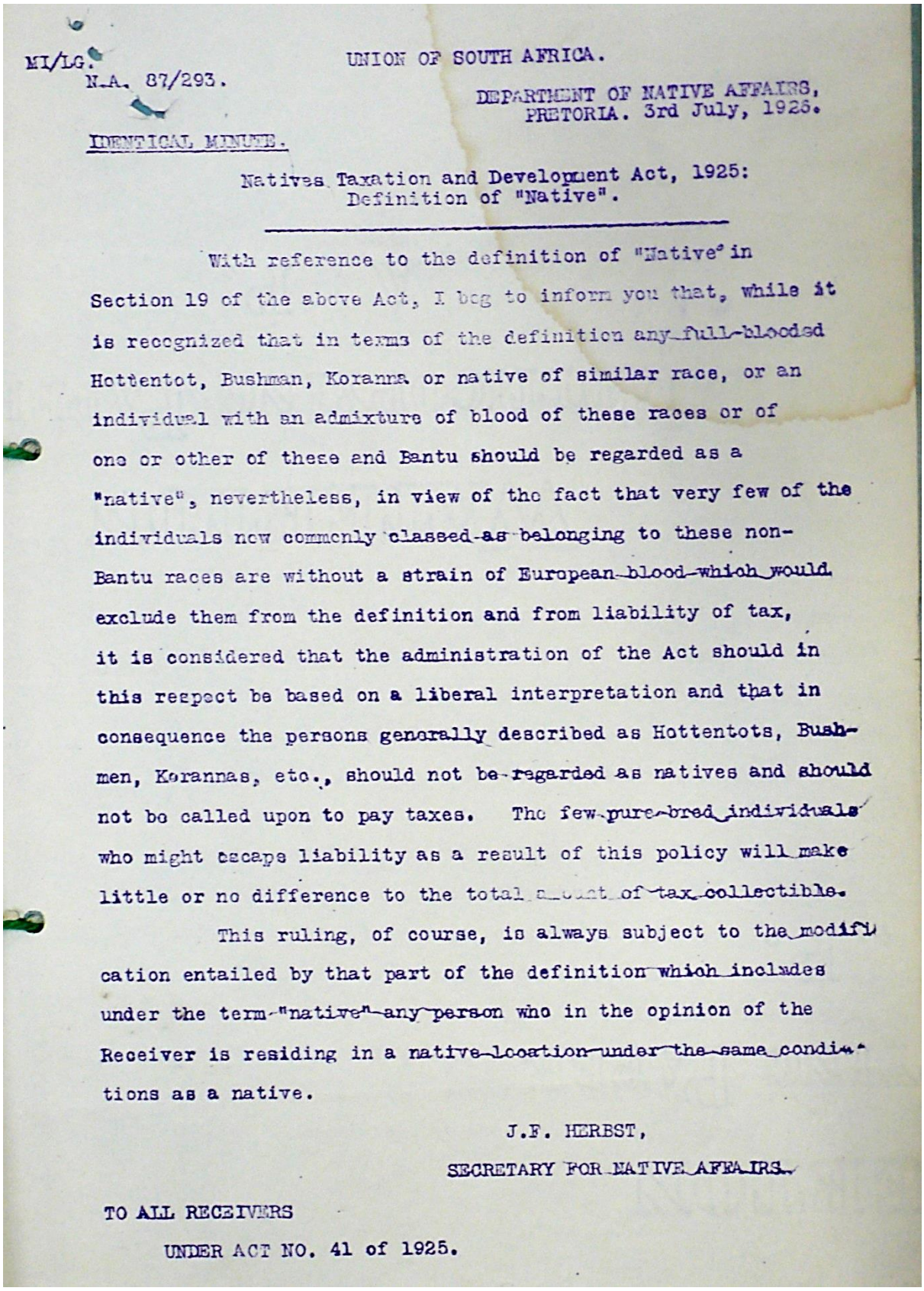
Sworn, at Durban, on this the 28th. November 1925.

Murrizuck his X mark

Before me,

Comr. for Oaths

Figure 3: Identical Minute No. 87/293.



MI/LG.
N.A. 87/293.

UNION OF SOUTH AFRICA.

DEPARTMENT OF NATIVE AFFAIRS,
PRETORIA. 3rd July, 1926.

IDENTICAL MINUTE.

Natives Taxation and Development Act, 1925:
Definition of "Native".

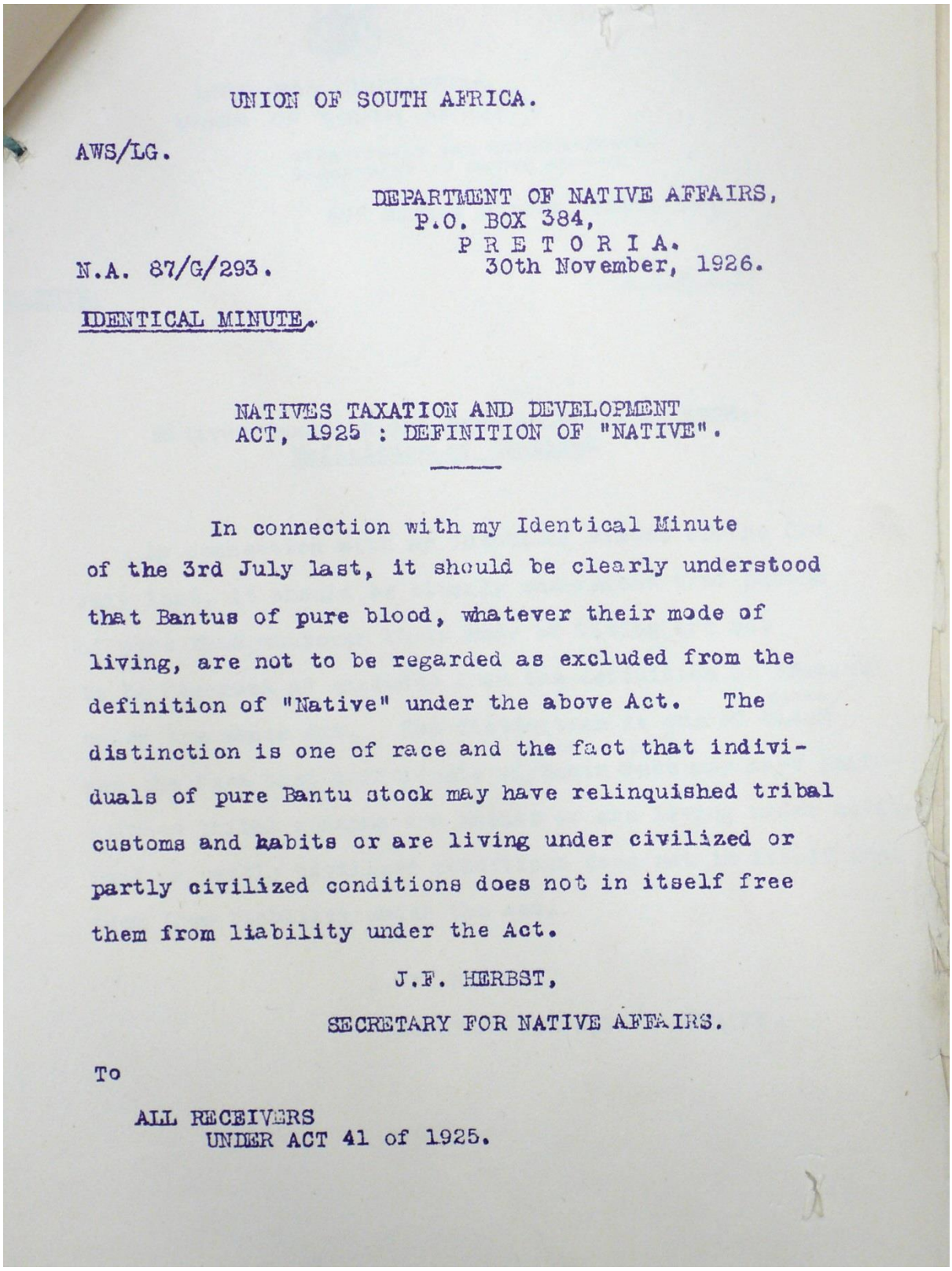
With reference to the definition of "Native" in Section 19 of the above Act, I beg to inform you that, while it is recognized that in terms of the definition any full-blooded Hottentot, Bushman, Koranna or native of similar race, or an individual with an admixture of blood of these races or of one or other of these and Bantu should be regarded as a "native", nevertheless, in view of the fact that very few of the individuals now commonly classed as belonging to these non-Bantu races are without a strain of European blood which would exclude them from the definition and from liability of tax, it is considered that the administration of the Act should in this respect be based on a liberal interpretation and that in consequence the persons generally described as Hottentots, Bushmen, Korannas, etc., should not be regarded as natives and should not be called upon to pay taxes. The few pure-bred individuals who might escape liability as a result of this policy will make little or no difference to the total amount of tax collectible.

This ruling, of course, is always subject to the modification entailed by that part of the definition which includes under the term "native" any person who in the opinion of the Receiver is residing in a native location under the same conditions as a native.

J.F. HERBST,
SECRETARY FOR NATIVE AFFAIRS.

TO ALL RECEIVERS
UNDER ACT NO. 41 of 1925.

Figure 4: Identical Minute No. 87/G/293.



UNION OF SOUTH AFRICA.

AWS/LG.

DEPARTMENT OF NATIVE AFFAIRS,
P.O. BOX 384,
P R E T O R I A.

N.A. 87/G/293. 30th November, 1926.

IDENTICAL MINUTE.

NATIVES TAXATION AND DEVELOPMENT ACT, 1925 : DEFINITION OF "NATIVE".

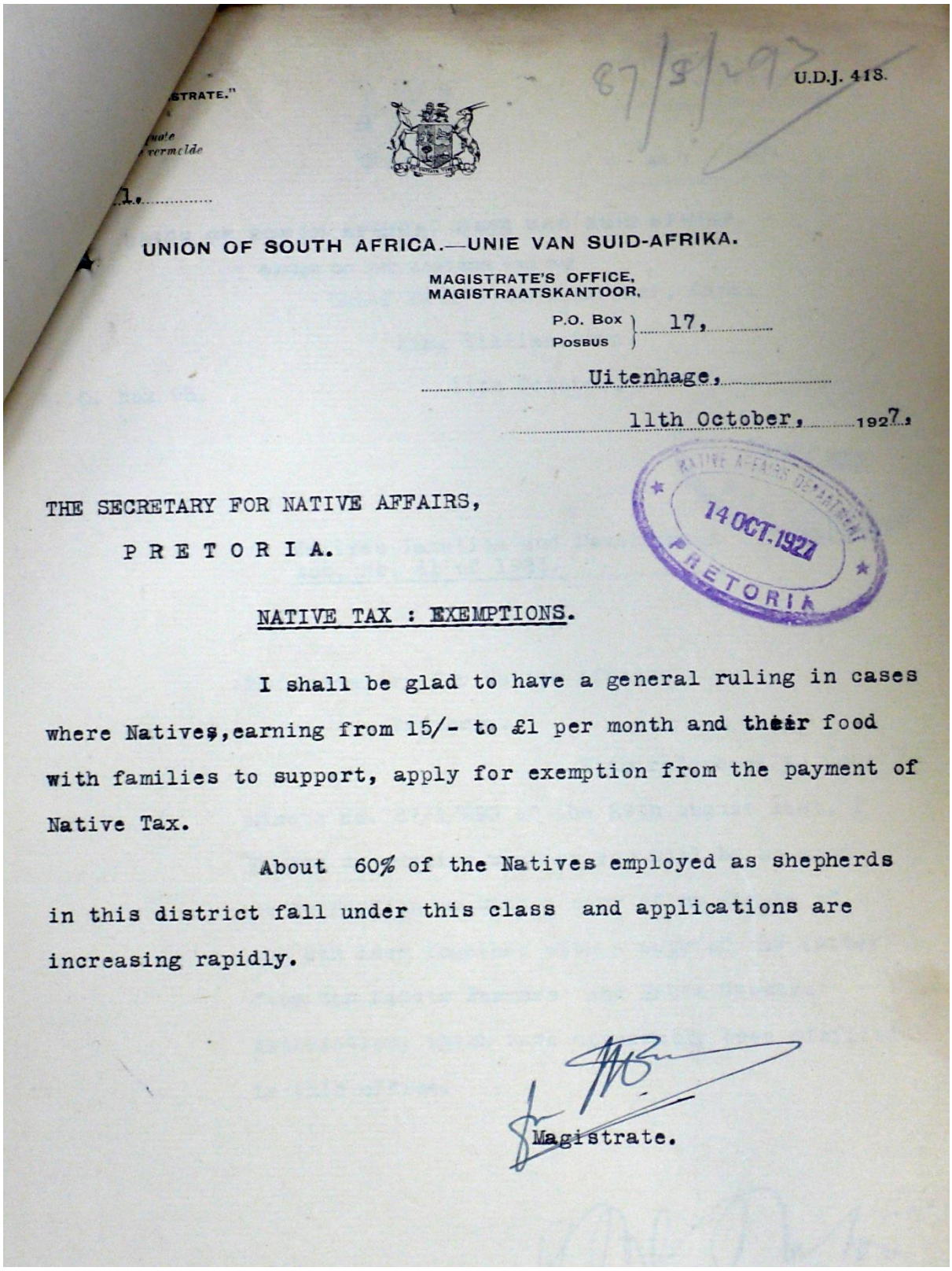
In connection with my Identical Minute of the 3rd July last, it should be clearly understood that Bantus of pure blood, whatever their mode of living, are not to be regarded as excluded from the definition of "Native" under the above Act. The distinction is one of race and the fact that individuals of pure Bantu stock may have relinquished tribal customs and habits or are living under civilized or partly civilized conditions does not in itself free them from liability under the Act.

J.F. HERBST,
SECRETARY FOR NATIVE AFFAIRS.

To

ALL RECEIVERS
UNDER ACT 41 of 1925.

Figure 5: Exemption query from the Magistrate of Uitenhage Addressed to the Secretary of Native Affairs.



U.D.J. 418.

87/8/293

UNION OF SOUTH AFRICA.—UNIE VAN SUID-AFRIKA.

MAGISTRATE'S OFFICE,
MAGISTRAATSKANTOOR,

P.O. Box / Posbus 17,

Uitenhage,

11th October, 1927.

14 OCT. 1927
PRETORIA

THE SECRETARY FOR NATIVE AFFAIRS,

P R E T O R I A.

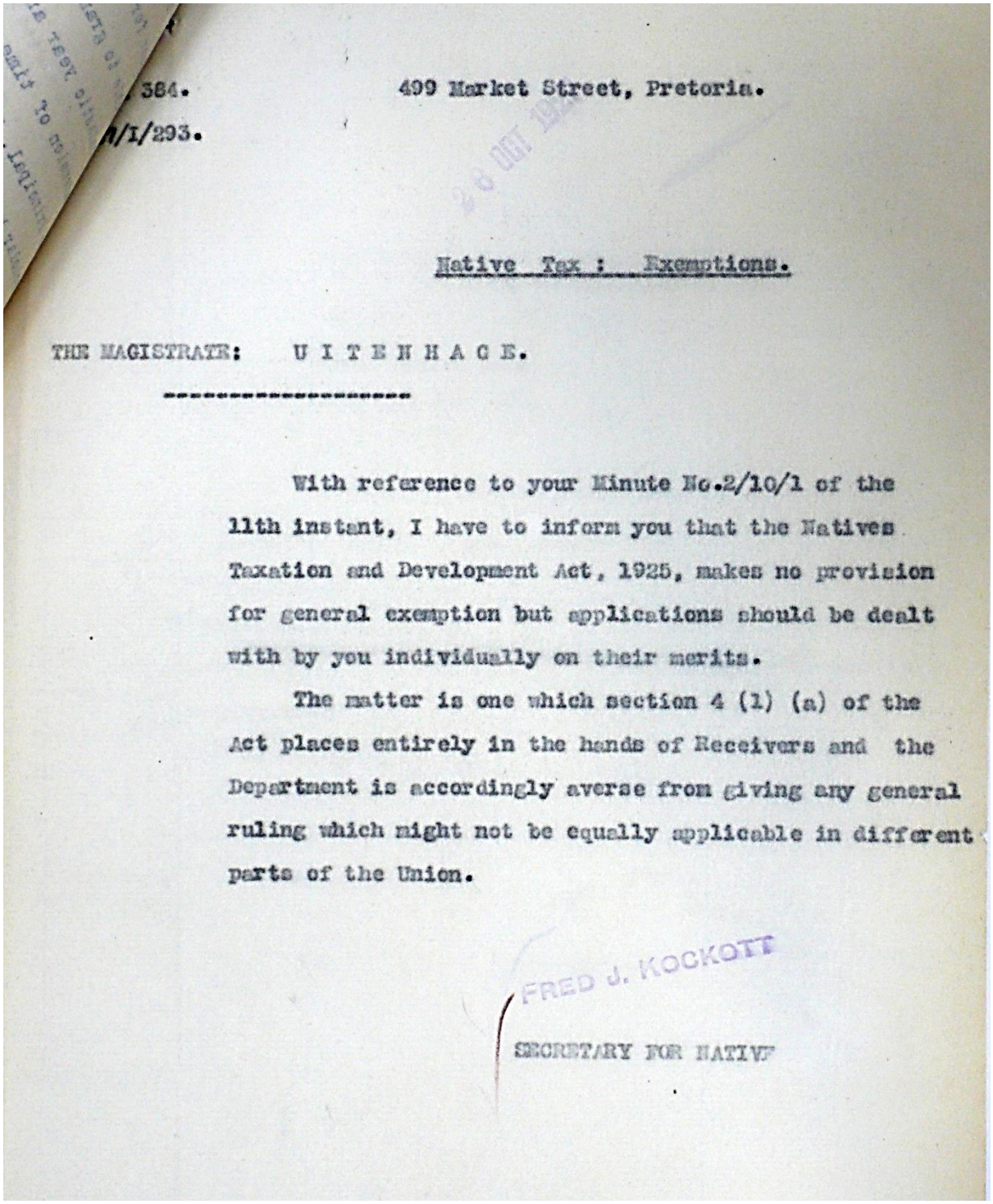
NATIVE TAX : EXEMPTIONS.

I shall be glad to have a general ruling in cases where Natives, earning from 15/- to £1 per month and their food with families to support, apply for exemption from the payment of Native Tax.

About 60% of the Natives employed as shepherds in this district fall under this class and applications are increasing rapidly.

Magistrate.

Figure 6: Reply from the Secretary of Native Affairs to the Magistrate of Uitenhage regarding Exemptions.



384.

N/1/293.

499 Market Street, Pretoria.

Native Tax : Exemptions.

THE MAGISTRATE: U I T E N H A G E.

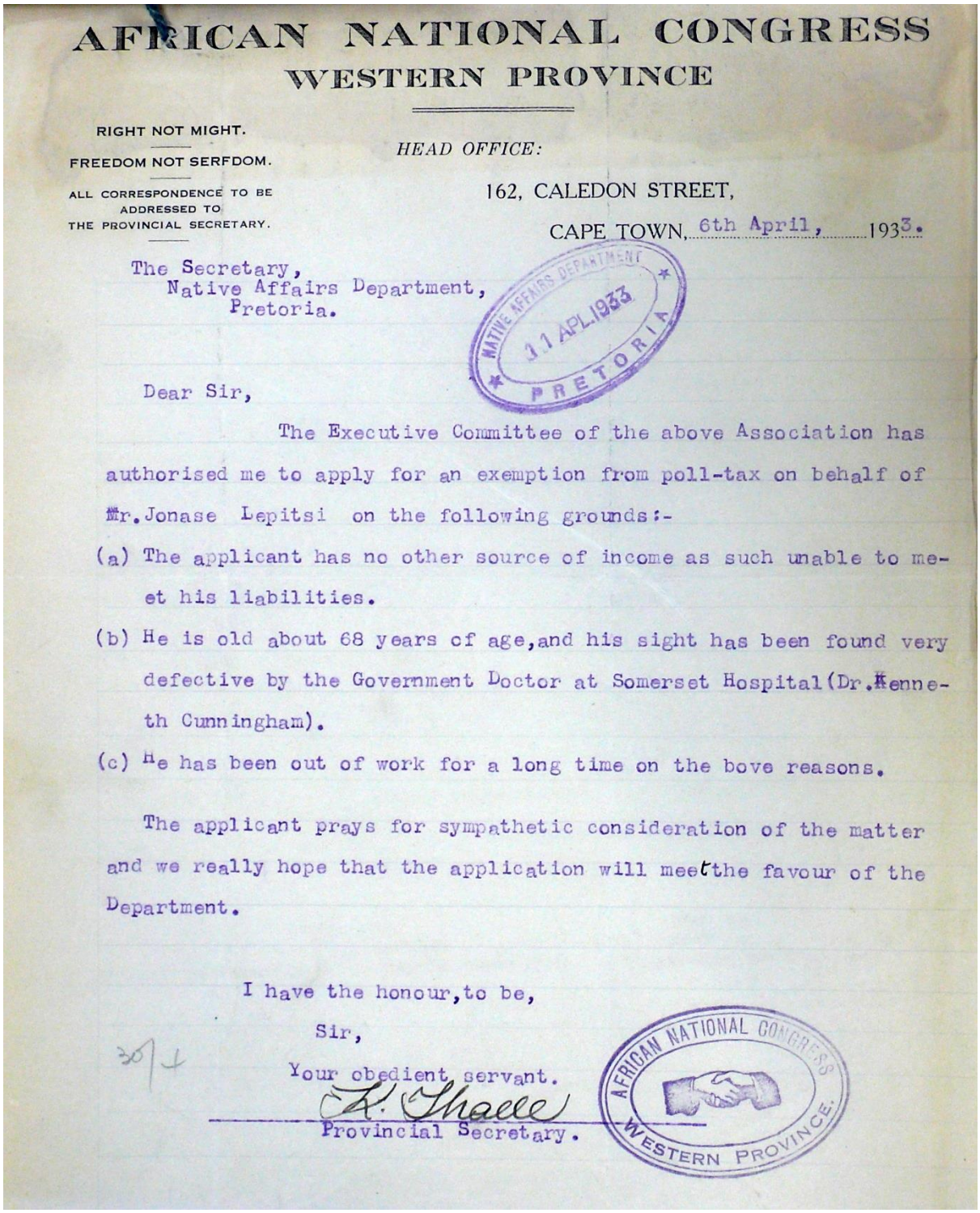
With reference to your Minute No.2/10/1 of the 11th instant, I have to inform you that the Natives Taxation and Development Act, 1925, makes no provision for general exemption but applications should be dealt with by you individually on their merits.

The matter is one which section 4 (1) (a) of the Act places entirely in the hands of Receivers and the Department is accordingly averse from giving any general ruling which might not be equally applicable in different parts of the Union.

FRED J. KOCKOTT

SECRETARY FOR NATIVE

Figure 7: Exemption Application from the African National Congress (Western Province) Addressed to the Secretary of Native Affairs.



AFRICAN NATIONAL CONGRESS
WESTERN PROVINCE

RIGHT NOT MIGHT.
FREEDOM NOT SERFDOM.
ALL CORRESPONDENCE TO BE ADDRESSED TO THE PROVINCIAL SECRETARY.

*HEAD OFFICE:*
162, CALEDON STREET,
CAPE TOWN, 6th April, 1933.

NATIVE AFFAIRS DEPARTMENT 11 APL 1933 PRETORIA

The Secretary,
Native Affairs Department,
Pretoria.

Dear Sir,

The Executive Committee of the above Association has authorised me to apply for an exemption from poll-tax on behalf of Mr. Jonase Lepitsi on the following grounds:-

(a) The applicant has no other source of income as such unable to meet his liabilities.

(b) He is old about 68 years of age, and his sight has been found very defective by the Government Doctor at Somerset Hospital (Dr. Kenneth Cunningham).

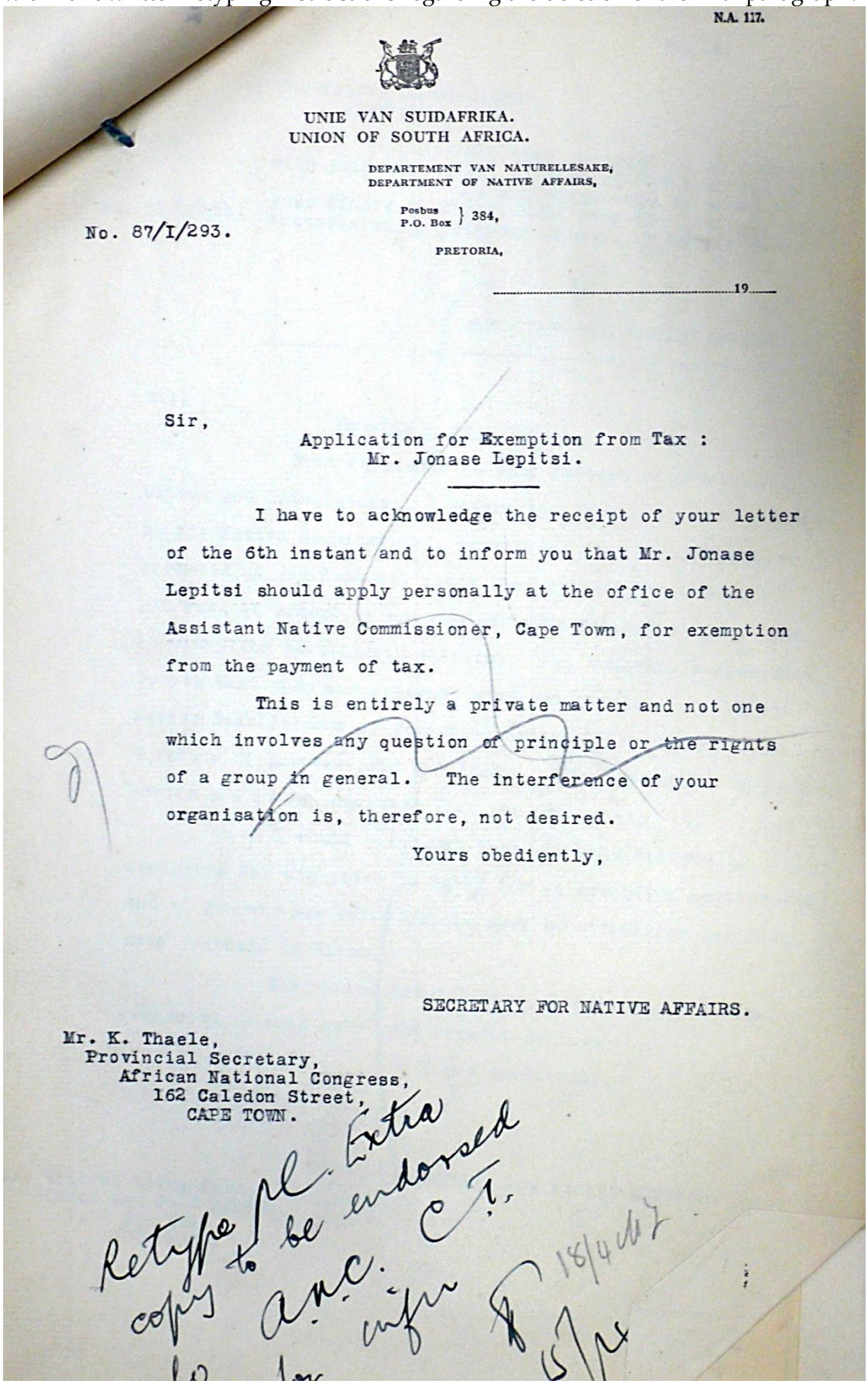
(c) He has been out of work for a long time on the bove reasons.

The applicant prays for sympathetic consideration of the matter and we really hope that the application will meet the favour of the Department.

I have the honour, to be,
Sir,
Your obedient servant.
L. Thaele
Provincial Secretary.

AFRICAN NATIONAL CONGRESS WESTERN PROVINCE

Figure 8: Draft Reply from the Secretary of Native Affairs to the African National Congress: with handwritten retyping instructions regarding the deletion of the final paragraph.



N.A. 117.

UNIE VAN SUIDAFRIKA.
UNION OF SOUTH AFRICA.

DEPARTEMENT VAN NATURELLESAKE,
DEPARTMENT OF NATIVE AFFAIRS,

Posbus / P.O. Box } 384,

PRETORIA,

No. 87/I/293.

19

Sir,

Application for Exemption from Tax :
Mr. Jonase Lepitsi.

I have to acknowledge the receipt of your letter of the 6th instant and to inform you that Mr. Jonase Lepitsi should apply personally at the office of the Assistant Native Commissioner, Cape Town, for exemption from the payment of tax.

This is entirely a private matter and not one which involves any question of principle or the rights of a group in general. The interference of your organisation is, therefore, not desired.

Yours obediently,

SECRETARY FOR NATIVE AFFAIRS.

Mr. K. Thaele,
Provincial Secretary,
African National Congress,
162 Caledon Street,
CAPE TOWN.

Retype pl. Extra copies to be endorsed A.N.C. C.T.

18/4/47

# CHAPTER SIX

# Liability or Exemption: Farmers, Farm Workers and the Poll Tax of 1925

> *In respect of farming areas there is the anomaly that while the great majority of farmers escape direct taxation all their Native male employees over the age of 18 must pay it.*[1]

## 6.1 Introduction

The introduction of the Natives Taxation and Development Act meant that a standard poll tax on African men was imposed across the Union for the first time. While the tax of £1 was applied uniformly, its affects were not equally felt. Men in the urban areas of the Transvaal, for instance, were relatively better off following the tax's introduction. Their poll tax charge – previously £2 in that province – was now halved. For some, the new tax entailed no change in their financial position. Men in the Orange Free State continued to pay the same amount of £1, as they had done under the previous provincial poll tax; and Transvaal farm workers' tax liabilities remained unaltered at £1.

Men in the Cape and Natal Provinces, however, were relatively worse off following the introduction of the Act. The hut taxes that were applied there ranged from ten to 15 shillings per annum; and a 10 shilling poll tax was imposed across roughly half the

1. U.G. 22, Report of Native Economic Commission, 1930–32, p. 225.

districts of the Transkei.[2] In the Cape and Natal, prior to 1926, men employed on white-owned farms paid no tax, apart from custom and excise duties on goods purchased. For those men, the general tax was a new and onerous tax.

The previous chapter investigated a directive that excluded "Hottentots, Bushmen and Korranas" from the application of the Act. That decision had repercussions for various black racial groups and for the officials who were obliged to implement it. This chapter examines the consequences of the poll tax's introduction for a particular subset of African men, namely farm workers. It also explores the indirect consequences for the white farmers who employed them. The concerns of the officials tasked with enforcing the tax in rural districts are also recorded, as are the responses of the Native Affairs Department in attempting to allay their doubts and reservations.

## 6.2 Poll tax exemptions

The general tax, as its name implied, was far-reaching and comprehensive. Anyone in the Union who was African, and male, and 18 years of age or older, faced the prospect of paying the tax every year for the rest of his life. Despite its all-encompassing scope, the tax did allow for a few exemption possibilities, although none of these were indefinite. A man's exempt status had to be renewed on a year-by-year basis. There were four categories of men who could be released from the obligation to pay the tax.

2. Redding, *Sorcery and Sovereignty*, pp. 58, 71.

One category was men who had an Income Tax liability of £1 or more.[3] A few Africans fell into this category but their number was "insignificant", according to a Native Economic Commission report.[4] A second category included foreign nationals. Men who had a permanent home outside the Union and who could prove that they had paid an equivalent tax in their home country, were not liable.[5] Thirdly, students studying at an educational institution approved by the Native Affairs Commission could also gain exemption.[6] The fourth, and most problematic, exemption category applied to men who were "indigent" or who were in "necessitous circumstances".[7] Someone who was poverty-stricken, for instance, and unable to work as a result of a chronic disease, could be granted exemption. However, the status of thousands of able-bodied men who were impoverished, if not destitute, was less clear. The uncertainty of their position was especially significant in rural South Africa where poverty was rife. This issue surfaced with particular regularity on the farms of the Eastern Cape and Karoo.

3. Section 4(2) of the Act.

4. U.G. 22, Report of Native Economic Commission 1930–32, p. 224.

5. Section 4(1)(*b*) of the Act.

6. Section 4(1)(*c*) of the Act.

7. Section 4(1)(*a*) of the Act.

### 6.3 The taxation of farm labour: Cape magistrates' concerns and objections

With the Act coming into operation on 1 January 1926, it was not long before opposition to the new tax, particularly in the Cape Province, began to be voiced – and often from unlikely quarters. Among the first to question the tax were Cape magistrates. District magistrates in the Cape functioned as receivers of revenue; and after the introduction of the tax many expressed misgivings about it. Some of the magistrates simply queried the interpretation of the new law. Others, however, had doubts about the practical and humanitarian aspects of imposing the tax on farm labour, in particular. Those doubts were communicated directly to Major Herbst, the SNA, in Pretoria.

One of the first to question the new legislation was the magistrate based in Bedford, a farming district in the Eastern Cape. In a letter to Herbst in March 1926, shortly before the new tax became due for the first time, the magistrate provided a description of the economic condition of farm workers in his district.[8] The average cash wage, he pointed out, was approximately 10 shillings per month (i.e. half a £), plus rations and a free dwelling. The magistrate acknowledged that some farm workers owned a few head of livestock, but most did not. Furthermore, workers were deeply in debt to their employers for food rations and other goods purchased on credit. As the magistrate put it in his letter: "[T]hey have no cash to spare and can just about exist, bearing in

8. NTS 2510, file 87/293 (I), RM Bedford District to SNA, 13 March 1926.

mind that most of them are married with families. Is it the intention of the Act to make such men pay the tax?"[9]

That same month, the magistrate of Sterkstroom, a district 272 kilometres north-west of East London, expressed similar misgivings. He pointed out that farm worker wages amounted to 10 shillings per month along with a "very meagre ration of mealies"; and he also noted that in many cases the man had a family to support.[10] "Is it conceivable that of their yearly earnings of £6 they will be able to pay £1 to the Government?"[11] His question was followed by a declaration that he would carry out official instructions but, the magistrate said, he felt "constrained to plead for the poor, starving native".[12] Similar reservations were expressed in October 1927 by the magistrate of Port Alfred, in the Eastern Cape, who commented that he was:

> aware that … this [part of the Port Alfred] District is suffering from an unprecedentedly severe drought and farm work is at a complete stand still. A considerable [number] of Natives [are] consequently out of employment and many will have to suffer privations if payment of the tax is enforced.[13]

9. NTS 2510, file 87/293 (I), RM Bedford District to SNA, 13 March 1926.

10. *Ibid*., RM Sterkstroom District to SNA, 18 March 1926.

11. *Ibid*.

12. *Ibid*.

13. NTS 2510, file 87/293 (M), RM Port Alfred District to SNA, 6 October 1927.

Magistrates who were still relatively unfamiliar with the new legislation, queried whether the exemption provisions of the Act could possibly include farm labour. Exemption applications and enquiries were submitted soon after the Act's promulgation and officials needed guidance on interpreting the relevant provisions of the new law. Some officials assumed that there was an earnings threshold, below which a man would be exempted from the tax. The magistrate of Humansdorp, shortly before the new tax was introduced, anticipated that the vast majority of African men in his district would be applying for exemption because of their inability to pay the tax:

> Since the question of exemption is left to [the discretion of] the Receiver, it would be of great assistance and tend towards uniformity if the Department were to lay down what should be considered as the maximum earnings of a native, regard being had to his conjugal condition and number of children, which would justify exemption.[14]

For other magistrates, certain terminology was unclear. The Act, for instance, provided exemption for "indigent" men but as far as the Bedford magistrate was concerned, this word was far too vague.[15]

Magistrates knew that they had a certain amount of discretion in terms of who could or could not be exempted, but in poverty stricken rural areas that could mean widespread exemptions. They were placed in the invidious position of having to

14. NTS 2510, file 87/293 (I), RM Humansdorp District to SNA, 14 December 1925.

15. Section 4(1)(*a*); NTS 2510, file 87/293 (I), RM Bedford District to SNA, 13 March 1926.

either demand payment from men who were in a parlous financial state or alternatively, grant wholesale exemptions and then be obliged to explain the shortfalls in tax collections to the Native Affairs Department in Pretoria. According to the magistrate of Sterkstroom: "… if I did what I thought was right I would exempt 75 per cent [of African men]. Of the remaining 25% not more than 10% would be in a position to pay the tax comfortably".[16] In June 1926, the magistrate of Williston, a town situated in the Cape Province's arid Karoo region, requested clarification on whether shepherds in his district earning "from 10/- to 15/- per month plus certain rations and veldskoens" could be granted exemption.[17] They had conveyed to him that they had families to support and could not pay the tax. By October 1927, similar requests were also escalating in the Uitenhage area. The magistrate of that district requested a general departmental ruling regarding the tax status of farm workers in his jurisdiction.[18] He reported that they earned between 15 shillings and £1 per month, along with food rations: "About 60% of the Natives employed as shepherds in this district fall under this class and applications [for exemption] are increasing rapidly" (see Figure 5, page 154).[19]

16. NTS 2510, file 87/293 (I), RM Sterkstroom District to SNA, 18 March 1926.

17. *Ibid*., RM Williston District to SNA, 10 June 1926.

18. *Ibid*., RM Uitenhage District to SNA, 11 October 1927.

19. *Ibid*.

The SNA's starting point when responding to magistrates' questions and calls for clarification, was to provide his interpretation of the exemption provisions of the new Act. There was only one section of the law at issue here, namely Section 4(1)(*a*).[20] This section provided exemption for:

> … any native who satisfies the receiver that he is indigent and is prevented from working by reason of age, chronic disease or other sufficient cause or that he is in necessitous circumstances and is prevented by causes not within his control from earning sufficient to enable him to pay the tax…[21]

Herbst pointed out that the word "satisfies" implied that officials had discretion in deciding individual cases: "The matter is one which section 4(1)(*a*) of the Act places entirely in the hands of Receivers."[22] However, he did highlight that there were two components to the paragraph.[23] The first dealt with men who were "indigent" and the second referred to men in "necessitous circumstances". The word indigent, according to Herbst, should be interpreted as referring to persons who were paupers and who were not earning any income.[24] This would only apply in cases "caused by a Native's total inability to earn any means of livelihood".[25] The second part of the paragraph,

20. There were two more subsections to Section 4(1). One dealt with the exemption of foreign nationals while the other provided exemption for men studying at approved educational institutions.

21. Section 4(1)(*a*).

22. NTS 2510, file 87/293 (I), SNA to RM Uitenhage District, 28 October 1927.

23. *Ibid*., SNA to RM Williston District, 16 June 1926.

24. *Ibid*., SNA to CNC King Williams Town District, undated.

25. *Ibid*., SNA to RM Sterkstroom District, March 1926.

referring to men in necessitous circumstances, "was intended to meet only exceptional cases where unusual hardship had been encountered which were not strictly covered by the first part [of the paragraph]".[26] Herbst refused to be drawn on what those necessitous circumstances might be. As he put it: "It is thought that no hard and fast rule can be laid down in regard to the question of exemption. The matter is left to the discretion of Receivers who should decide each case on its merits."[27]

What was apparent, however, was that men in employment, including farm workers, would not be granted a blanket exemption, regardless of how little they earned. The whole question of general exemptions had to be "approached with caution", the SNA said.[28] In reply to the magistrate of Uitenhage on the exemption of shepherds in the district, Herbst indicated that widespread exemptions could not be considered (see Figure 6, page 155).[29] Workers earning ten shillings per month (which the Sterkstroom magistrate had mentioned) were not indigent nor were they in necessitous circumstances, and therefore could not qualify for an exemption. "[It] may be remarked that these Natives are in no worse circumstances than many thousands in the Ciskei."[30] The view that farm workers, as a class, could not be granted exemption

26. NTS 2510, file 87/293 (I), SNA to CNC King Williams Town District, undated.

27. *Ibid*., SNA to RM Middelburg District, 27 July 1926.

28. *Ibid*., SNA to RM Sterkstroom District, March 1926.

29. *Ibid*., SNA to RM Uitenhage District, 28 October 1927.

30. *Ibid*., SNA to RM Sterkstroom District, March 1926.

was reiterated to other magistrates.[31] Even although receivers of revenue had a degree of discretion in ruling on exemption applications, that was only on a case-by-case basis. That discretion had to be "used sparingly as indulgence of this nature invariably tends to make the natives lax in the discharge of their tax liabilities in future years, however bountiful they may be".[32]

Not all magistrates were placated when told they had discretion in individual exemption cases. The Port Alfred magistrate pointed out that:

> … the reply by the Secretary of Native Affairs that the matter is one which is placed entirely in my hands by the Act is quite misleading. The only power placed in my hands is to grant exemption to Natives unable to work, or to grant extension [of time] in individual cases after investigation into each such case.[33]

The magistrate was correct in this assessment. Employed men were subject to the tax. Furthermore, any man who was employable or able to work was also liable to pay the tax. The only form of relief that could be granted was an extension of the period in which payment could be made. This fact was borne out some years later when the South African Institute of Race Relations (SAIRR) noted:

31. Resident magistrates of Bedford, Humansdorp, Williston, Middelburg and Somerset East received similar replies.

32. NTS 2510, file 87/293 (M), SNA to RM Port Alfred District, 19 October 1927.

33. *Ibid*., RM Port Alfred District to CNC King Williamstown District, 21 December 1927.

> The Secretary [of Native Affairs] stated that exemption was granted for poverty and physical disability, but that genuinely unemployed natives could only get 'time to pay' and that they seldom got extension of time beyond two or three months at a time.[34]

### 6.4 Farmers' associations: Grievances and appeals

Magistrates were not alone in expressing doubts about the imposition of the poll tax in rural areas. A number of white farmers' associations, particularly in the Cape, lobbied for some form of exemption for the workers on their farms. Here the requests usually reflected self-interest, although in some instances there was also a humanitarian element. The first such appeal came from the Bedford Farmers' Association in a letter dated 14 April 1926 addressed to JBM Hertzog, the Minister of Native Affairs, who was also the Prime Minister at the time.[35] At the association's previous meeting a unanimous resolution had been passed, requesting the minister:

> to consider the desirability of exempting bona fide monthly paid natives on farms, from the operation of such Tax, in view of the fact that in the opinion of this Association fully 90% of these natives are not able to pay the tax.[36]

According to the association's resolution, the farmers were forced to pay the tax on behalf of their workers. Farmers who chose not to pay the tax would face "great inconvenience and loss … in the event of such natives being summonsed and

34. NTS 2510, file 87/293 (G), South African Institute of Race Relations to SNA, 30 October 1931.

35. NTS 2510, file 87/293 (I), Secretary of the Bedford Farmers' Association to the Minister of Native Affairs, 14 April 1926.

36. *Ibid*.

imprisoned".[37] These sentiments were echoed, just two weeks later, when the Victoria East Farmers' Association passed a resolution that strongly opposed the imposition of the tax on farm labourers who were employed on a permanent basis. As far as that association was concerned, the "tax will ultimately fall on the shoulders of the farmers who are already heavily taxed".[38]

Fourteen months later, in August 1927, the Peddie Farmers' and Fruit Growers' Association made similar demands.[39] Peddie lies 72 kilometres east of Grahamstown and members of the region's association complained to the local magistrate that they were struggling to obtain African workers following the introduction of the general tax. The farmers were of the opinion that the situation would only get worse. Their request to the government was that the poll tax be "done away with" for "farm servants in permanent employment".[40] One month later, in September 1927, the farmers of Coombs, another district to the east of Grahamstown, also requested exemption for the workers on their farms, although their request did not go as far as

37. NTS 2510, file 87/293 (I), Secretary of the Bedford Farmers' Association to the Minister of Native Affairs, 14 April 1926.

38. *Ibid*., Secretary of the Victoria East Farmers' Association to RM Alice, 29 April 1926.

39. *Ibid*., Secretary of the Peddie Farmers' and Fruit Growers' Association to RM Peddie District, 4 August 1927.

40. *Ibid*.

the Peddie farmers had done.[41] After describing the drought in the area they requested a waiver of the collection of the poll tax until the drought was over.

By the end of 1927, the magistrate of Port Alfred was also coming out in support of farmers in his district.[42] The Eastern Border Farmers' Association had informed him about the destitute condition of farm workers owing to the two-year long drought and asked the authorities for "amelioration".[43] When forwarding the association's resolution on this matter to the Chief Native Commissioner in King Williams Town, the magistrate noted the "parlous state of the district and the privations suffered by European and Native alike" and added that even if there was rain within the next few days there would be "no amelioration of their prospects for at least six months thereafter". The magistrate had been informed that cattle were dying and that many faced "ruin and famine". Only African men employed on farms were paying the tax and the money was being paid by their employers.[44]

Drought conditions were still being experienced five years later, at a time when South Africa remained in the grip of a severe economic depression. In 1932 the magistrate of

41. NTS 2510, file 87/293 (M), Secretary of the Coombs Farmers' Association to RM Port Alfred District, 21 September 1927.

42. *Ibid*., RM Port Alfred District to CNC King Williamstown District, 21 December 1927.

43. *Ibid*., Secretary of the Eastern Border Farmers' Association to RM Port Alfred District, 17 December 1927.

44. *Ibid*., RM Port Alfred District to CNC King Williamstown District, 21 December 1927.

Dordrecht, a district north of Queenstown, commenting on the request received from the local farmers' union to suspend the tax, noted that there had been "very little rain in the district and no grain harvest" and that "with the current price of wool", the farmers were growing increasingly desperate.[45]

Petitions for farm worker exemptions came mainly from the Eastern Cape but occasionally appeals came from other parts of the country. The North Waterberg Farmers' Association in the Transvaal complained in May 1928 that farm workers were unable to pay the tax.[46]

That same year the Central Albany Farmers' Association circumvented the Native Affairs Department and addressed its appeals directly to the Minister of Native Affairs.[47] The association requested the complete revocation of the poll tax for all farm workers. The appeal was based on a number of factors: drought conditions were once again cited, along with the fact that farm workers' cash wages were low. The association regarded the tax as simply an additional cost to the farmers themselves, because workers did not have the money to pay it. In addition, the tax gave "agitators

45. 1/DDT 5/23, file 2/8/4, RM Dordrecht District to Commissioner for Inland Revenue, 16 November 1932. Correspondence in Afrikaans.

46. NTS 2510, file 87/293 (I), SNA to Secretary of the North Waterberg Farmers' Association, 28 June 1928.

47. *Ibid*., Secretary of the Central Albany Farmers' Association to Minister of Native Affairs, 26 January 1928.

cause of grievance" and, furthermore, farm workers, according to the association, did not benefit from the tax because few farm workers had access to the free education that the tax was intended, at least partially, to fund.[48]

The repeated assertions that effectively the poll tax amounted to an additional tax on white farmers was presumably true, based on the number of complaints received from the various farmers' associations. The magistrate of Dordrecht, in a letter to the Commissioner for Inland Revenue, stated quite candidly that the "tax payable by the native is usually paid by the farmer".[49] Wages were so low in the sector that many employers must have realised that to retain labour they would have to pay the tax on their workers' behalf. The one obvious point that farmers did not raise was that, to the extent that their farms were profitable, that profitability was in large measure the result of their exploitatively low labour costs. While farmers usually received a sympathetic hearing from district officials on the matter, that was not always the case. In forwarding Peddie farmers' complaints to the Chief Native Commissioner in King Williamstown, the local magistrate made a telling observation: "I might remark that wages of agricultural and pastoral labourers in this District are very low, and that the

48. NTS 2510, file 87/293 (I), Secretary of the Central Albany Farmers' Association to Minister of Native Affairs, 26 January 1928.

49. 1/DDT 5/23, file 2/8/4, RM Dordrecht District to Commissioner for Inland Revenue, 16 November 1932. Correspondence in Afrikaans.

farmers are consequently in a position to pay the General Tax as an addition to such wages."[50]

It was ultimately Major Herbst, the Secretary of Native Affairs, who dealt with the various associations' demands, regardless of to whom they had originally been addressed – and the farmers' appeals proved to be futile. The basis of the Herbst's replies was essentially the same as those he had sent to magistrates, but without any detailed legal interpretation of the Act. In reply to the Bedford Farmers' Association, for instance, he simply pointed out that exemption was available to indigents who had no ability to earn income but there was no possibility of extending the range of exemption categories to include farm workers.[51] Farmers received the stock response:

> …during the passage of the Natives Taxation and Development Act Parliament gave full and careful consideration to the aspect of the matter raised by you to bring about uniformity in Native Taxation in as equitable a manner as possible. It is not therefore possible to make any discrimination in favour of farm servants.[52]

This answer was usually followed by the small concession that receivers of revenue had the discretion to grant an extension of time for payment that would, according to the Herbst, "facilitate matters for the farm labourers".'[53]

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50. NTS 2510, file 87/293 (I), RM Peddie District to CNC King Williamstown, 6 August 1927.

51. *Ibid*., SNA to Secretary of the Bedford Farmers' Association, 3 May 1926.

52. *Ibid*., SNA to Secretary of the United Farmers, 31 July 1928.

53. *Ibid*., SNA to Secretary of the Bedford Farmers' Association, 3 May 1926.

Not all the department's responses were routine however. Occasionally the farmers' arguments were explicitly refuted. In answer to the Peddie Farmers' Association claim that there was a loss of farm labour following the introduction of the tax, the SNA retorted:

> It is not understood, however, how the imposition of the taxes under the Act should cause a decrease in the supply of native labour, as it is thought that it should rather act as an incentive to the natives to obtain employment to enable them to meet their tax liabilities.[54]

Nevertheless, some of the associations' contentions could not be readily dismissed. The issue of low farm wages, for example, was one that could hardly be denied. Herbst conceded to the farmers of Central Albany that pay was low in the agricultural sector but had a counter-claim of his own:

> It is true that Native farm servants generally receive less wages in cash than for instance Natives employed upon the mines, but at the same time the fact cannot be overlooked that in the majority of cases they receive compensating benefits in the shape of cultivation rights and grazing for stock, etc.[55]

Waterberg farmers, on the other hand, were informed that despite wages being low, "the farm native is in a better position than the location native".[56] The reason for this

54. NTS 2510, file 87/293 (I), SNA to CNC Cape, 29 August 1927.

55. *Ibid*., SNA to Secretary of the Central Albany Farmers' Association, 16 February 1928.

56. *Ibid*., SNA to Secretary of the North Waterberg Farmers' Association, 28 June 1928.

assertion was that men living in reserves or in locations paid an "additional [hut] tax varying from 10/- to £2 according to the number of his establishments".[57]

Grievances about hardships arising from drought conditions were also acknowledged, but here again, petitions were unsuccessful:

> It is realised that the serious drought which prevails in certain parts of the country makes conditions very difficult for Natives, in common with other sectors of the population, but in this connection I would point out that provision is made in the Act whereby receivers of revenue can grant extensions of time to Natives for payment of their tax and even exemption from tax liability in cases where the circumstances warrant it.[58]

On other occasions a drought was simply regarded as an irrelevance. In a letter to the Chief Native Commissioner in Cape Town concerning conditions in the Peddie district, the SNA remarked that he could not understand the grounds for the application for exemption because a "farm servant in regular employment should not be affected by the drought conditions".[59]

Herbst's replies, needless to say, were not always well received by farmers. On being informed that their farm workers could be granted more time to pay the tax – instead

57. NTS 2510, file 87/293 (I), SNA to Secretary of the North Waterberg Farmers' Association, 28 June 1928. In terms of section 2(2) of the Act, a local tax "of ten shillings shall, in addition to the general tax, be paid in respect of every hut or dwelling in a native location within the Union by the native occupier thereof."

58. *Ibid*., SNA to Secretary of the Central Albany Farmers' Association, 16 February 1928.

59. *Ibid*., SNA to CNC Cape, 25 February 1928.

of exemption – the divisional council of Bathurst, writing on behalf of farmers in the district, protested that:

> the fact of the Magistrate having discretion to extend the time of payment of Poll Tax will not in any way meet the situation in this area, it being obvious that if the natives cannot pay one year's tax at one time, they will not be able to do so when they have to meet arrear taxes as well.[60]

This was followed by a request, yet again, that the situation be reconsidered and that bona fide farm labourers be exempted from paying the tax.[61]

The divisional council's comments were later echoed by the South African Institute of Race Relations. It highlighted the connection of general unemployment and poll tax liability and contended that even though a sympathetic judge might not send an unemployed man to jail he could not "wash the debt away".[62] As an example, the institute cited the situation of a man finding work after being unemployed for three years. His accumulated liability would amount to £3, not including the debt for the year in which he found employment:

> What can a native who fails to get work do? There is now definitely more Native labour than is required in nearly every town in the Union and yet all these unfortunates have to pay the Poll Tax, and so have either to go to gaol or get into debt.[63]

60. NTS 2510, file 87/293 (I), Secretary of the Divisional Council of Bathurst to SNA, 25 June 1928.

61. *Ibid*.

62. NTS 2510, file 87/293 (G), South African Institute of Race Relations to SNA, 30 October 1931.

63. *Ibid*. Even if the men served a gaol sentence, the liability to pay the tax remained unaltered. See section 9(4) of the Act.

By 1928 some of the farmers' associations had evidently realised that a blanket exemption for farm workers was not going to be granted. Follow-up petitions, slightly modified, were then submitted. Peddie farmers who in August 1927 requested that the tax "be done away with" for all farm workers in permanent employment, moderated their demands six months later.[64] Their new request was for the exemption of "farm servants who have been in continuous employment for twelve months".[65] That request was also denied. Following this rejection, the farmers in the Eastern Cape evidently felt that petitioning local magistrates or the Native Affairs Department was no longer a viable option. By mid-1928, a group calling itself United Farmers began to address its complaints directly to the Secretary of Agriculture. The group's affiliated associations were based in Upper Albany, Bathurst East, Bathurst West, Eastern Border, Peddie, Koonap, Coombs and Lower Albany. The group claimed to have over 600 registered members and it requested that the government "reconsider the whole question of Native Poll Tax and make an allowance for farm servants who had served one master for more than twelve months".[66]

Appeals to the Secretary of Agriculture also proved to be pointless because they were ultimately forwarded to Major Herbst at the Native Affairs Department. His response

64. NTS 2510, file 87/293 (I), Secretary of the Peddie Farmers' and Fruit Growers' Association to RM Peddie District, 4 August 1927.

65. *Ibid*., Secretary of the Peddie Farmers' and Fruit Growers' Association to RM Peddie District, 8 February 1928.

66. *Ibid*., (Acting) Secretary of United Farmers to SNA, 17 July 1928.

to these petitions was by now fairly standard. The United Farmers group received the usual response that parliament had given "full and careful consideration to the aspect of the matter raised by you to bring about uniformity in Native taxation in as equitable a manner as possible".[67] There could accordingly be no discrimination in favour of farm labour.

Towards the end of 1928, there were still some sporadic appeals from farmers' associations but they were becoming infrequent. The Peddie Farmers' and Fruit Growers' Association submitted yet another appeal in October of that year, while the Cape Province Agricultural Association petitioned the Minister of Native Affairs one month later.[68] Both these requests for exemption were rejected. Farmers began to realise that their petitions were pointless, and appeals tapered off thereafter.

By the early 1930s, occasional appeals still filtered through to the Native Affairs Department. By this time, farmers were feeling the effects of the global economic depression and a repeal or suspension of the poll tax would have alleviated their financial situation. In February 1932, V. de la Harpe, the magistrate of Jansenville, a town 141 kilometres northwest of Port Elizabeth, reported that he had met with

67. NTS 2510, file 87/293 (I), SNA to Secretary of the United Farmers, 31 July 1928.

68. *Ibid*., Secretary of the Peddie Farmers' and Fruit Growers' Association to RM Peddie District, 8 October 1928; and Secretary of the Cape Province Agricultural Association to the Secretary of the Minister of Native Affairs, 8 November 1928.

several white farmers in the district.[69] The men gave him an account of their financial difficulties. There were severe cutbacks as a result of the crippling depression and the wages of their Native employees had been cut back in many cases. The magistrate explained that of necessity, wages were "being paid either partly in cash and kind or in kind only, instead of wholly in cash".[70] He went on to state that some farmers had previously "paid the tax on behalf of their employees but [they] no longer had sufficient funds to continue doing so". In addition, the farmers tried to avoid retrenching workers as far as possible, knowing that the prospect of workers finding alternative employment was highly unlikely. To emphasise this point the magistrate disclosed that he had received reports "that Natives have trekked about in the district with their families in search of employment and not been able to find any even though they offered their services solely in consideration of rations".[71] De la Harpe concluded with a somewhat plaintive request: "Please instruct me as to what should be done in the matter".[72]

The same month that de la Harpe reported on the situation in his district, a petition was also submitted to the Minister of Native Affairs, by the Border Farmers' League. The minister was informed that:

69. NTS 2510, file 87/293 (G), RM Jansenville to SNA, 9 February 1932.

70. *Ibid*.

71. *Ibid*.

72. *Ibid*.

> The farmer bases his request [for exemption] on the fact that this tax is one, that he as the native's master has to pay, therefore becoming a burden, which in the present condition of the farming industry, he is unable to bear. [73]

The league received the response, from SNA Herbst, that the government was "unable to see its way clear to introduce legislation having as its object the exemption of farm labourers from the payment of the general or poll tax, as suggested by your League".[74]

The effects of the so-called Great Depression were reported elsewhere in the Eastern Cape. In Dordrecht, the local farmers' union appealed to Prime Minister Hertzog in August 1932, asking him to suspend the tax temporarily due to the "prevailing poverty and unemployment amongst the Natives".[75] Despite the appeal's humanitarian sentiments, the resident magistrate was sufficiently forthright to observe that the farmers' plea was principally about avoiding having to pay the tax themselves.[76] The following year, Dordrecht's magistrate went on to report that the majority of men in the district had not paid tax in 1933.[77] The reason was simple. Men did not have enough money to pay it:

73. NTS 2510, file 87/293 (I), Secretary of the Border Farmers' League to the Minister of Native Affairs, 11 February 1932.

74. *Ibid*., SNA to Secretary of the Border Farmers' League, 17 February 1932.

75. 1/DDT 5/23, file 2/8/1, Secretary of the Dordrecht Boere Vereeniging to the Minister of Native Affairs, 28 August 1932. Correspondence in Afrikaans.

76. *Ibid*., RM Dordrecht District to Commissioner for Inland Revenue, 16 November 1932. Correspondence in Afrikaans.

77. 1/DDT 5/23, file 2/8/4, RM Dordrecht District to Secretary for Justice, 14 November 1933.

> [T]he farmers admit quite openly that they have not been in a position to pay their labourers. The local Police inform me that in several instances Natives have been found carrying Promissory Notes for the amount of wages due to them by their masters.[78]

By the end of 1933, appeals from farmers' associations had more or less ceased. After almost eight years since the imposition of the tax on farm workers, their employers had evidently become resigned to the fact that it was not going to be repealed.

### 6.5 The taxation of farm labour: African responses

Misgivings about the general tax, however, were not voiced solely by farmers and rural magistrates. Occasionally the protests by African men in rural areas were also recorded in the official documents. Their dissent was expressed indirectly through magistrates' letters written on their behalf, or by petitions submitted directly to the state, or via the representations of black organisations.

One example of such protest was reported by the magistrate of Humansdorp, a town 95 kilometres west of Port Elizabeth.[79] The magistrate outlined details of a meeting he held with a group of about 60 men from various parts of the surrounding district a few days before the general tax came into effect. The aim of the meeting was to explain the implications of the impending tax to the group of men. The magistrate recounted that the tax was looked upon with "universal disfavour".[80] The men attending the

78. 1/DDT 5/23, file 2/8/4, RM Dordrecht District to Secretary for Justice, 14 November 1933.

79. NTS 2510, file 87/293 (I), RM Humansdorp District to SNA, 14 December 1925.

80. *Ibid*.

meeting testified that wages were so low in the district that it would be impossible for them to pay the tax. Average daily wages for farm workers ranged from one shilling and six pence to two shillings per day, with food. Monthly wages ranged from 10 shillings to £1 per month "with four buckets of food, i.e. mealies, beans, sweet potatoes etc.".[81] The group that met with the Humansdorp magistrate also included subsistence farmers from rural reserves. These men complained of overcrowding in the reserves, which meant they could not keep enough livestock to earn a reasonable living. The subsistence farmers also pointed out that in the past they had been unable to pay their hut taxes and asked how they were going to be able to pay this new, additional tax.

Another group of African men, this time in the town of Middelburg in the Cape Province, met with the local magistrate of that area on two occasions in July 1926.[82] The magistrate was likewise asked to explain the implications of the tax. The men raised two examples of typical predicaments farm workers faced in the area. Firstly, they wanted information on whether the unemployed were liable to pay the tax because many men in the area were jobless. Secondly, they provided an outline of the typical financial circumstances of men who were employed. In the district, a man with a wife and two children would earn approximately 15 shillings per week. The group pointed out that if someone in this situation had "to maintain his family, his

81. NTS 2510, file 87/293 (I), RM Humansdorp District to SNA, 14 December 1925.

82. *Ibid*., RM Middelburg District to SNA, 16 July 1926.

expenditure [had to be] carefully managed", and provided the following example of typical weekly expenditure:[83]

| | |
|---|---|
| Mealie Meal | 2/ 6 |
| Boer Meal | 4/ 6 |
| Sugar | 1/ 6 |
| Coffee or tea | 2/ - |
| Meat | 1/ 6 |
| Wood | 3/ - |
| | 15/ - |

These expenses, the men explained, did not include "Paraffin, Matches, Rent, Taxes, Clothes etc.".[84] How was a man in this position expected to pay the poll tax, the group wanted to know? The men received a sympathetic hearing from the magistrate who reported their concerns to the Native Affairs Department. The exemption provisions of the Natives Taxation and Development Act made reference to men in "necessitous circumstances" and the magistrate asked whether there was any legal ruling on the term. Did the phrase, he enquired, cover men in the situations that had been described to him?

Herbst's response to these two examples was terse. Unemployed men, cited in the first instance, could be given an extension of time until they found employment. A man

83. NTS 2510, file 87/293 (I), RM Middelburg District to SNA, 16 July 1926.

84. *Ibid*.

earning a low wage, in the second example, was "not a case where the exemption contemplated in the section in question could be granted".[85] This was followed by the secretary's standard reply that parliament had given "full and careful consideration to the economic position of all persons" who were liable to pay the tax.[86]

Petitions by African men were not only made via district magistrates. Soon after the implementation of the tax, 46 men from the Eastern Cape district of Pearston submitted a petition directly to the Prime Minister. Hertzog was informed that the men were unable "to abide by the provisions of the Act owing to poverty resulting from shamefully low wages and unemployment".[87] For the petitioners, it was difficult to see how a man with a family could "come out on [a wage of 10 shillings per month] and be able to pay this tax".[88] Unemployment, furthermore, was at unprecedented levels in the district "owing to the low demand of native labour both on the farms and in town".[89]

Additional petitions from a group of African clergymen and lay persons, representing men from the districts of Somerset East, Graaff-Reinet, Cradock, Adelaide and

85. NTS 2510, file 87/293 (I), SNA to RM Middelburg, 21 July 1926.

86. *Ibid*.

87. *Ibid*., Petition from African representatives in the Pearston District, addressed to the Prime Minister, 12 February 1926.

88. *Ibid*.

89. *Ibid*.

Jansenville, were forwarded to Hertzog twice over a six-month period in 1926. The second petition, dated 2 December 1926, provided details of average wages for farm workers in the districts. Workers in permanent employment earned between 8 and 10 shillings per month, with rations. Those amounts, the Prime Minister was informed, were "barely sufficient to support and clothe themselves and their families".[90] Workers employed on an *ad hoc*, daily basis were earning between two shillings, and two shillings and six pence per day. Day labourers were frequently out of work because of the scarcity of work and "especially as Native Labour is now being replaced by White Labour". The petitioners went on to point out that they were sure that many cases of stock theft in the district were a result of the underlying poverty. They were "aggrieved" by the introduction of the tax and informed Hertzog that it was simply not affordable.[91]

These petitions proved futile. Once again, all correspondence addressed to the Prime Minister – or any other branch of government – was ultimately forwarded to John Herbst, at the Native Affairs Department. His reply to the Pearston petitioners – via the local magistrate – was that their representations had been considered. For Herbst, there was

> … no difficulty in dealing with the allegation of unemployment, and if those who wish for work will record with you particulars as to their age and capacity and their families and stock,

90. NTS 2510, file 87/293 (I), Petition from the Eastern Cape Midlands Conference, addressed to the Prime Minister, 2 December 1926.

91. *Ibid*.

> I do not doubt that employment can be found for them upon farms in other parts of the country where agricultural labour is badly needed. [92]

In the case of the Eastern Cape petitioners the SNA once again provided his routine response that parliament had carefully considered the matter and furthermore, the "Minister has no power to modify the incidence of the taxation imposed".[93]

On rare occasions, rural opposition to the tax by organisations representing black workers went beyond petitioning the authorities. In 1931, the breakaway faction, the independent ANC initiated poll tax boycotts in the Middelburg district of the Cape Province. Those boycotts, according to the local magistrate, resulted in a 50% decline in tax collections in the district for the 1930 and 1931 years.[94]

The official ANC response to the tax, however, appears to have been largely confined to denunciations of the Act and exhortations to its members not to pay. These responses are outlined in Peter Limb's publication, *The ANC's Early Years* (2010). According to Limb, in December 1926, John Gcingca, General Secretary of the organisation, complained in a letter to Hertzog about the haste in which writs of attachment were being issued.[95] Four months later at a Bloemfontein meeting, Doyle

92. NTS 2510, file 87/293 (I), SNA to RM Somerset East, 19 January 1927.

93. *Ibid*.

94. Limb, *The ANC's Early Years*, p. 422.

95. *Ibid*., p. 336.

Modiakgotla, secretary of both the ANC's Orange Free State branch and the ICU in Griqualand West, called on Africans to "sit down, throw away their passes and refuse to pay taxes".[96] At the 1930 conference of the Bechuanaland-Griqualand West ANC branch, a resolution was passed calling for the abolition of the poll tax.[97] At the ANC's National Executive Committee (NEC) meeting in February 1931, Keable 'Mote, then secretary of the Free State branch, described the "intolerable" working conditions on farms. Written contracts were rare, working hours were not fixed, and workers could be fired at a moment's notice. Farm labourers, who were given "nothing except verbal promises", 'Mote pointed out, were still obliged to pay the tax. Pass law and poll tax raids were "high-handed and reprehensible". As far as 'Mote was concerned, African men should be granted exemption from the tax, at least until the depression had ended.[98]

Two months later, in April 1931, at the NEC meeting in Natal, John Dube described how the tax of £1 was too heavy for Africans who after all had "no luxuries, they are poor people, and they earn small wages". Dube could cite examples of workers in the Weenen district who earned a meagre 10 shillings (half a £) per month. "I do not believe that any poor people … on the wages they receive, should be subject to direct

96. Limb, *The ANC's Early Years*, p. 343.

97. *Ibid*., p. 439.

98. *Ibid*., p. 472.

taxation … If [taxation] is not reduced [they] should be paid higher wages".[99] In September of 1934, Alfred Xuma, who was appointed ANC president in the 1940s, described how many African men were unemployed because of segregationist labour policies and yet they still had to pay the general tax and faced prosecution if they did not have a valid tax receipt in their possession.[100]

Occasionally the ANC made direct appeals to the Native Affairs Department on behalf of individuals. Although the organisation was unsuccessful in those appeals, it still proved an irritant for state officials. In 1931, Kennon Thaele, Provincial Secretary of the ANC in the Western Province demanded a poll tax exemption and refunds for an aging farm worker in the Sutherland district. Thaele, according to the resident magistrate, was "upsetting the local order of things" by his "interference with coloured and Native labour and local addresses to them". As a result, workers were "leaving their farms on flimsy pretences to satisfy Thaele and his society".[101] Grievances had to be submitted via "recognised channels", and the ANC, as far as the Native Affairs Department was concerned, was not one of those channels. In the opinion of the department, the ANC was "the society which has in the past given considerable trouble by interfering in judicial and administrative matters".[102]

99. Limb, *The ANC's Early Years*, p. 460.

100. *Ibid*., p. 459.

101. *Ibid*., p. 425.

102. *Ibid*., p. 340.

Two years later, Thaele submitted another exemption application. This application, on a document with the ANC letterhead and a by-line RIGHT NOT MIGHT. FREEDOM NOT SERFDOM, was on behalf of Jonase Lepitsi, an elderly worker with poor eyesight, who was resident in the Cape Town area. According to Thaele, the man had no source of income and was unable to meet his liabilities (see Figure 7, page 156). The Secretary of Native Affairs was informed that the "applicant prays for sympathetic consideration of the matter and we really hope that the application will meet the favour of the Department".[103] In response, the department made it clear that exemption submissions via the ANC were not going to be tolerated. In a single-sentence reply, Thaele was informed that Lepitsi had to apply personally at the office of the local assistant Native Commissioner.[104] In the letter's initial draft an official, writing on behalf of the secretary concluded by stating that the issue of exemption was "entirely a private matter and not one which involves any question of principle or the rights of a group in general. The interference of your organisation is, therefore, not desired".[105] The official must have had second thoughts about the wording and in a handwritten note in the margin, asked that the letter be retyped with the ending deleted (see Figure 8, page 157).

103. NTS 2510, file 87/293 (I), K. Thaele, Provincial Secretary of African National Congress, Western Province to SNA, 11 April 1933.

104. *Ibid*., SNA to Provincial Secretary, African National Congress, Western Province, 18 April 1933.

105. *Ibid*., Unsigned draft. Note that the concluding paragraph is scratched out in pencil. Retyping instructions are given in the margins, handwritten and initialled in ink, 18 April 1933.

The local magistrate in the Tsomo District of the Transkei had no such qualms. He informed the ANC branch in Cofimvaba that complaints about taxes "do not concern your organisation".[106] The chief magistrate of Umtata also accused the ANC of submitting grievances that "bristle with exaggeration". The local branch of the organisation, in the magistrate's opinion, did "not represent any large section of the people".[107]

### 6.6 Summary

The implementation of the Natives Taxation and Development Act, in systematising the various provincial tax systems, marked an increase in the centralising power of the South African state. While the tax on African men might have been standardised, responses to it highlighted regional and racial fractures within the Union. The general tax, inevitably was a cause of grievance and protest for the African men who were directly affected by it. Their responses varied on a regional basis because some men were relatively better off following the introduction of the tax.

The new tax was particularly onerous, however, for men employed on farms who were among the lowest paid – if not the lowest paid – wage labourers in the Union. The fact that a substantial number were earning approximately £6 per year (10

106. Limb, *The ANC's Early Years,* p. 340.

107. *Ibid.,* p. 339.

shillings per month) and accordingly paying tax at an effective rate of nearly 17% per annum, highlighted their desperate economic circumstances.[108] In today's terms, farm workers – still among the lowest paid in the country – earning a statutory minimum of R38 030 per year, are well below the tax threshold and are not liable to pay any income tax at all.[109] Were they to be taxed at the effective rate applied in the 1920s and 1930s, they would be liable to pay over R6 000 to the fiscus each year.[110]

The tax also revealed fissures within white South Africa. On the face of it, a tax on African men appeared to be entirely in white interests. This was not the case. Among whites, the overwhelming opposition came from farmers in the Eastern Cape and Karoo who stood to lose the most as a result of the tax's introduction. The new tax created a number of disagreeable prospects for them. There was the possibility of losing labour to relatively higher paying sectors of the economy in urban South Africa. For workers who remained on farms there were inevitably payment defaults and the resultant disruption of farming operations due to summonses and arrests. The farmers' other option – one that many appear to have chosen – was simply to pay the tax themselves. For Thompson, Hertzog's main support base came from white

108. A £1 tax on annual income of £6 represents an effective tax rate of 16,67% per annum.

109. Minimum wages for farm workers in South Africa for the period 1 March 2018 to 28 February 2019 are R3 169.69 per month (R38 030.28 per year). See http://www.labour.gov.za/ DOL/downloads/ legislation/sectoral-determinations/basic-conditions-of-employment/ farmforestrywages 1march2018.pdf . The income tax threshold for the year ended 28 February 2019 is R78 150. See http://www.sars.gov.za/Tax-Rates/Income-Tax/Pages/Rates%20of%20Tax% 20for% 20Individuals.aspx

110. R38 030 x 16,67% = R6 339.

farmers.[111] It is reasonable to assume, however, that the state's consistent refusal to exempt farm labour must have undermined his support among a significant segment of the farming sector – particularly among farmers in parts of the Cape Province. The fact that most of the farmers' protests came from ostensibly English-speaking farming associations in the Eastern Cape and Karoo, may have led Hertzog to believe that they were constituencies he could safely ignore at relatively little political cost.

There were additional divisions within the state itself – between the central administration in Pretoria and the district officials faced with the difficult task of implementing the new tax. Those divisions were particularly evident in the Cape Province where magistrates were obliged to enforce what was effectively a new, additional tax on men in poverty-stricken rural areas.

111. Thompson, *A History of South Africa,* p. 161.

# CHAPTER SEVEN

## Conclusion

> *Your Petitioners feel aggrieved that the Government should under the circumstances levy this additional Tax without providing the means by which your Petitioners can be enabled to meet it.*
>
> Petition addressed to Prime Minister Hertzog, December 1926[1]

The Natives Taxation and Development Act of 1925 was one of many racial laws instituted during the post-Union period. In investigating the Act, this dissertation had a number of objectives. Firstly, it set out to provide to some historical context to the Act. It also intended to describe the various provincial taxes on Africans that were enforced prior to 1925 and to consider parliamentary debates leading up to the enactment of the new law. It examined the application and enforcement of the Act, and explored the court cases of men who denied their inclusion within the Act's central, racial definition. It also aimed to examine the Native Affairs Department's attempts at resolving numerous racial classification issues. Finally, it investigated responses from various quarters to the taxation of African farm workers.

Responses to an inherently discriminatory and unjust tax are explored and documented throughout the study. Those responses came from a wide range of sources: African taxpayers, receivers of revenue, white farmers, provincial

1. NTS 2510, file 87/293 (I), Petition from clergy and lay representatives of the Eastern Cape Midlands Conference, addressed to the Prime Minister, 2 December 1926.

representatives, district magistrates, African organisations, judges, the Native Affairs Department, and other official bodies.

Two broad issues pervade this study. Firstly, there is the issue of racial classification. The general tax of 1925 was a racial tax imposed upon a multiracial society. The inherent anomalies and contradictions underlying official racial categories had to be addressed continually by state officials. Recurring attempts by judges, magistrates, and the Native Affairs Department to deal with these issues are discussed in this study. Secondly, there is the persistent question of African men's inability or unwillingness to pay the tax. This was a tax imposed on a largely poor population without reference to their resources. Inevitably, there was resistance to that imposition. Resistance to the tax from various quarters, is a subject that has also been explored throughout this study. Historical documents and relevant court cases were used to analyse the above issues.

**A background to the poll tax**

The dissertation's second chapter began by providing some historical context to the poll tax's introduction. This was the first uniform tax on African men to be applied across the recently unified country and it was a consequence of that union. The introduction of the general tax of 1925, however, formed one part of an extensive process of centralising the state's hegemony and power. The tax was merely a single constituent in a raft of segregationist legislation enacted during the post-Union period.

The chapter summarises how, by 1939, the state's dominance was entrenched and pervasive despite African resistance.

The tax was not without precursors, however. Prior to 1925 each of the provinces had differing tax regimes for Africans. For men in the Transvaal and Orange Free State, the new statute's enactment meant that they continued to pay the same amount, or less, in tax. The situation was different in Natal and the Cape, however, where poll taxes were either not imposed, or their imposition was restricted to certain districts of the Transkei. Unsurprisingly, many of the disputes on the imposition of the tax emanated from the Cape, in particular. In a multiracial society men from different black groups lived and worked side by side. The difficulties that racial classification and differentiation presented were first recognised in the parliamentary debates leading up to the statute's promulgation. It was obvious, as one member of parliament pointed out, that "if this law comes into operation one man will pay nothing, but the other will have to pay £1".[2] The issue of distinguishing between the various black groups – and only taxing African men – was clearly going to be problematic.

**Enforcement and injustice**

Regarding enforcement of the tax, the state had to be pragmatic. It was largely pointless to issue writs of attachment for defaulting taxpayers in urban areas. There,

2. House of Assembly, *Parliamentary Debates*, 25 June 1925, Sir T.W. Smartt, MP for Fort Beaufort, col. 4988.

men were often migrant workers with little in the way of attachable assets in their possession. This meant that African men in cities and "proclaimed labour districts" were forced to carry tax receipts on their person – in addition to pass books. Without a tax receipt, they faced summary arrest. These measures engendered widespread resentment that by 1939, even the state had to acknowledge. What caused particular anger were the indiscriminate early-hour raids on urban homes of taxpayers and tax defaulters alike: The claim was made that "having discharged their obligation to the State [taxpayers] should not be subjected to constant proof of the fulfilment of their duty".[3]

In rural areas and small towns, on the other hand, collection methods followed due process. Men located in those areas were more likely to have assets that could be repossessed. Summonses to pay were first issued followed, if necessary, by a writ of attachment. As one witness stated in a committee of enquiry, the threat of a writ was usually all that was required to provide the necessary "something behind their neck" to elicit payment.[4] Whatever the nature of the state's pressure to collect the tax in urban or rural areas, it did not alter the fact that numerous men – by the government's own admission – had mounting tax debts that realistically, could not be paid.[5] Men

3. South Africa, *Report of the Departmental Committee of Enquiry into the Collection of Native Taxes, 1938*, p. 2.

4. *Ibid.*, p. 4.

5. *Ibid.*, p. 3.

who did not pay faced criminal conviction. Those convictions became a reality for tens of thousands of men over the 14-year period of this study.

The dissertation's third chapter also highlights the inherent unfairness and discrimination underlying the imposition of a poll tax. White taxpayers who often earned considerably more than their African counterparts were granted relatively generous tax threshold exemptions. The poll tax provided no such exemptions. An official report had to acknowledge that white farmers, for instance, could claim numerous tax deductions and often pay no tax at all, while their African workers, usually earning a pittance, were subject to the general tax.[6] Virtually all African men, employed or unemployed, faced poll tax liability.

**The judiciary**

This study also focusses on the judicial interpretation and application of a crucial provision of the Act: the definition of "native". The Natives Taxation and Development Act hinged on that definition. To fall within its terms meant an almost certain tax liability. Alternatively, if a man did not fulfil the requirements of the definition, he could safely disregard the Act in its entirety. Supreme Court judges faced the intractable problem of determining whether a man fell within this definition or not and they had to contend with a statutory history and case law, where there was

6. U.G. 22, *Report of Native Economic Commission*, 1930–32, p. 225.

"variability and imprecision on the subject of race".[7] Inconsistencies in legal definitions of the term "native" were common and confusing. In applying the tests of ancestry, appearance and associations, judges had to enter an opaque and subjective area. Was a man who looked African, but spoke Afrikaans and lived with a coloured woman, still a "native"? Was a man, who in appearance was obviously of mixed race but who had paid *lobola,*[8] and spoke an African language fluently, not a "native"?

In theory, official documents proving a man's ancestry should have provided a relatively straightforward, objective test for the courts. However, in practice, in South Africa of the 1930s, African men often had no such proof. The judiciary's remaining tests of appearance and associations were largely, if not entirely, subjective. A man's appearance was determined by the opinions of an assortment of court witnesses: Native Commissioners, constables, prison warders and the like. Ultimately, it was a judge who had to reach some rough assessment of how closely a man's bearing approximated some undefined stereotype of an indigenous African appearance. The test of a man's associations, or habits of life, was equally subjective. None of the courts addressed the question of what it meant to be "living under the same conditions as a native". This test often amounted to a vague appraisal of a man's social acquaintances or establishing what his home language was. In some cases, failing two of the tests

7. Posel, "Race as Common Sense", p. 89.

8. *Lobola* refers to an African bride price, traditionally paid in cattle.

was enough to include a man within the definition and therefore render him liable to pay the poll tax.[9] In others, failing one test was enough.[10] For some judges, the associations test was decisive,[11] for others, appearance was regarded as particularly important.[12]

These three tests were used in the *Fakiri* cases, probably the most significant poll tax cases of that period.[13] In both, the appellant attempted, unsuccessfully, to use the test of ancestry in his favour. The dismissal of Fakiri's challenges had wider implications, however. The relatively isolated group of Durban's Zanzibaris, carrying the official title of "liberated slaves", recognised the case's ominous implications for them. They were under the administration of the Protector of Indian Immigrants and their forebears were indentured workers who received a freed pass on completion of their term of indenture. Their status in the country's official racial hierarchy, therefore, was analogous to the position of people of Indian descent. Like those people, the Zanzibaris were not required to carry passes.[14] Their subjection to the general tax was

9. *Mahomed supra,* at 63.

10. *Tshwete supra,* at 67.

11 *Supra at 66.*

12. *Martin supra,* at 18.

13. *Fakiri supra* and *Fakiri*(2) *supra*.

14. Seedat, "The Zanzibaris in Durban", p. 17.

an intimation of their relegation in official status – one that was borne out years later when they were subsumed into the broader category of being "African".[15]

**Excluding "Hottentots, Bushmen and Korannas"**

The *Fakiri* cases provide an indication of how racial classification problems, in terms of the general tax, were not solely, or even mainly, about individuals. They also affected the tax status of entire groups of men. The everyday duty of deciding who was classified as a "native", for the most part, fell to the Native Affairs Department and to a stratum of lower-level officials who had to apply the law. The fifth chapter of this study underscores Posel's point that the Native Affairs Department had to come to terms with the fact that race was not a "fixed stable category".[16] For the department, race was not so much an essence "but rather a legal and bureaucratic construct which could be defined differently depending on the purposes of particular pieces of legislation".[17]

As the title of the Act suggests, the tax was intended to fund – at least in part – the "development" of "natives", and "natives" only. It was John Herbst, Secretary of Native Affairs, who barely six months after the tax's introduction, had to address the

15. The Zanzibaris were obliged to carry pass books, and by the late 1950s were forced to move from Durban's Bluff, in terms of the Group Areas Act, No. 41 of 1950. Some were relocated to the African townships of Umlazi and Lamontville. See Seedat, "The Zanzibaris in Durban", pp. 38–39, 43.

16. Posel, "Race as Common Sense", p. 92.

17. *Ibid*.

issue of some racial groups fulfilling the requirements of the definition of "native" (such as the Khoi and the San) who the state did not intend to tax. The SNA took the extra-legal decision to deem all "Hottentots, Bushmen and Korannas" as being of partial European descent. In his estimation, this took these groups out of the ambit of the Act. It was an expedient decision, without any basis in research or supporting evidence. It was left to magistrates and other officials to unravel which men belonged to which groups. Their complaints concerning the secretary's Identical Minute were two-fold.[18] Firstly, they had to decide "where to draw the line among the different classes of aboriginals".[19] Secondly, they were confronted by an issue that was initially raised during the statute's enactment. The country's various black groups often lived and worked together. The unfairness of only taxing one of these groups – men defined as "natives" – and not others, inevitably created resentment. The magistrate of Kimberley pointed out the inherent injustice. Men in his district, who would probably be classified as San, were "living alongside and under entirely similar conditions to natives doing the same work and earning the same pay and emoluments" and yet the one was "exempted and the other called upon to pay".[20]

18. The Identical Minute was circularised to all receivers of revenue in the Union. It provided instructions that "Hottentots, Bushmen and Korannas" should not be subject to the poll tax. See Figure 3 on page 152. Refer to JUS 895, file 1/420/25, Department of Native Affairs Identical Minute No. 87/293, 3 July 1926.

19. NTS 2507, file 87/293 (G), Superintendent of Natives Hay District to RM Hay District, 23 March 1927.

20. *Ibid*., RM Kimberley District to SNA, 27 April 1928.

There was also inconsistent application of Herbst's circular across districts. In some, it was applied strictly, in others leniently. Furthermore, from a tax collection point of view the departmental directive was not easy to administer. Black workers were often unable to put in an appearance at tax collection centres. Instead, the "employer came and [paid] the tax for them in which case the opinion of the employer of the taxpayer had to be accepted".[21] The assessment of whether a man was either an African, a Khoi, a San, or a Koranna, therefore, was dependent on the judgement of a white employer. However, these employers often had a vested interest in seeing their workers exempted, either because they paid the tax themselves, or because they feared losing labour to more lucrative sectors of the economy. The complexities of South Africa's racial demographics meant that one group – the Griquas – was overlooked in law and in departmental directives. Herbst's seemingly improvised assertion that Griquas should be regarded as "Hottentots" for the purposes of the tax – rendering them not liable – did not prevent the application of the Act being described as "very chaotic" in the Griqualand area.[22]

**Discord and disagreements within officialdom**

The study also reveals that the state was not a monolithic entity with consistent objectives. This was evident during the global depression of the early 1930s, when poll

21. NTS 2507, file 87/293 (G), RM Hopetown District to Secretary of Justice, 10 January 1927.

22. *Ibid*., J Frylinck to SNA, 3 October 1928.

tax collections were falling to new lows. The Department of Inland Revenue's goal, for instance, was to maximize tax collections; and for the commissioner of that department this meant "preventing the natives [from] assuming that they can disregard the law".[23] The Department of Justice, on the other hand, had its own concerns: jails were overcrowded with men who were destitute and unlikely to ever pay their accumulating tax debts. A Secretary of Justice telegram to a district magistrate declaring that "everything possible should be done [to] keep distressed natives from gaol", provides an indication of the alarm the matter caused.[24]

There was also consistent friction between the Native Affairs Department and the magistrates who had to confront the day-to-day realities of enforcing the law. The central state figure in the administration, interpretation and enforcement of the Act's provisions was the SNA, Major John Herbst. It was his responsibility to ensure that the new head tax was imposed as efficiently as possible across the country. In a racially segregated state, Herbst, as head of the Native Affairs Department had considerable power. All complaints, queries and objections on the tax were funnelled through his department. This did not prevent district magistrates speaking out against provisions of the Act, or against departmental directives. One magistrate informed the SNA that his instruction that Khoi, San and Koranna men should not be subject to the poll tax

23. 1/DDT 5/23, file 2/8/1, Department of Inland Revenue circular to all Receivers of Native Tax in the Union, 5 October 1932.

24. 1/DDT 5/23, file 2/8/4, Secretary of Justice to RM Dordrecht, 18 November 1933.

led to a far "greater problem than was ever anticipated".[25] Another magistrate pointed out that it was "almost impossible to carry out the ruling of the Native Affairs Department because of the great difficulty in discriminating between the Bantu and Non Bantu Aborigines".[26] According to the magistrate this differentiation lead to gross injustice and unfairness.

For Herbst, the inherent anomalies and inconsistencies in the legislation were either dismissed by directive, or simply brushed aside. His standard response that parliament had given "full and careful consideration" on the imposition of the tax was an expedient, bureaucratic tactic to avoid engaging with the multiplicity of issues that the tax raised. When Herbst did respond to a specific query he was usually dismissive. Magistrates who had difficulty differentiating between the Khoi, the San, the Korannas, the Griquas and Africans, had to use what he termed intelligent discretion and common sense.[27] He was "at a loss to see how difficulty [in differentiating between black groups] arises".[28]

25. NTS 2507, file 87/293 (G), RM Kimberley District to SNA, 27 April 1928.

26. *Ibid*., RM Hopetown District to SNA, 10 January 1927.

27. *Ibid*., SNA to RM Hay District, 24 April 1928.

28. *Ibid*., SNA to RM Griquatown District, 28 October 1928.

**Farm workers**

Tensions between magistrates and the Native Affairs Department were particularly evident regarding the taxation of farm workers. This dissertation provides a narrative account of how magistrates – to their credit – spoke out against the taxation of some of the poorest wage labourers in the country. Racial definition was not a central component of the taxation of these workers. There was no disputing the fact that the majority of African farm workers were "natives" as defined. What was instead at issue was their eligibility for exemption in terms of the "necessitous circumstances" required by the Act.[29]

Magistrates were often in the paradoxical position of being both tax collectors and, simultaneously, advocates for the men being taxed. It was district magistrates – not the government officials in Pretoria – who had to confront the vexing issue of taxing men who were clearly in no position to pay. In March 1926, for instance, just weeks prior to the poll tax's first payment deadline, one magistrate made it absolutely clear that workers in the agricultural sector had "no cash to spare and can just about exist".[30] The magistrate's incredulous question summed up the views of many officials who were obliged to exact payment from impecunious farm workers: "Is it the intention of the Act to make such men pay the tax?"[31] That same month, another magistrate went

29. Section 4(1)(*a*) of the Act.

30. NTS 2510, file 87/293 (I), RM Bedford District to SNA, 13 March 1926.

31. *Ibid.*

on record to "plead for the poor, starving native".[32] Just over 18 months later, a third magistrate was informing the SNA that men in the district would "suffer privations if payment of the tax is enforced".[33]

Herbst was equally dismissive of these appeals. Farm workers, who by his own admission received low wages, still received what he described as "compensating benefits" in the form of grazing rights for livestock.[34] Drought, according to the secretary, was a problem for white farmers, but not so for their workers. Herbst was a cautious bureaucrat. He refused to be drawn on what constituted the "necessitous circumstances" required to exempt destitute men. His caution is summed up in his observation that tax exemptions had to be used "sparingly as indulgence of this nature invariably tends to make the natives lax in the discharge of their tax liabilities in future years, however bountiful they may be".[35]

This study highlights another aspect on the taxation of farm workers, namely the opposition of white farmers, particularly in the Cape Province. Farmers' objections had less to do with humanitarian concerns than with self-interest. Farmers were

32. NTS 2510, file 87/293 (I), RM Sterkstroom District to SNA, 18 March 1926.

33. NTS 2510, file 87/293 (M), RM Port Alfred District to SNA, 6 October 1927.

34. NTS 2510, file 87/293 (I), SNA to Secretary of the Central Albany Farmers' Association, 16 February 1928.

35. NTS 2510, file 87/293 (M), SNA to RM Port Alfred District, 19 October 1927.

obliged to contemplate two disagreeable prospects. On the one hand, they faced the loss of labour, either due to poll tax arrests and convictions, or to higher paying sectors of the economy. Alternatively, they had to pay the £1 tax themselves. Many farmers were forced into choosing the latter option – hence the numerous pleas from farmers' associations for amelioration in the form of exemption for their workers. These pleas continued into the 1930s when the price of agricultural produce fell during the global depression. In that period it was not unknown for employed labourers to be paid only in kind. Similarly, unemployed workers were so destitute that there were reports of them being prepared to work for rations only.[36] Men in these situations simply did not have enough cash to pay the tax.

African responses to the tax were a reflection of their relative lack of power during that period. Those responses were limited mainly to objections, petitions and denunciations. African men complained to magistrates about how it was impossible to pay the tax.[37] The Prime Minister was petitioned to "take such measures as to ask your HOUSE OF ASSEMBLY [sic] to have this Act repealed".[38] ANC representatives continued to denounce the tax. Its enforcement was labelled "high-handed and reprehensible".[39] However, apart from isolated boycotts there appears to have been

36. NTS 2510, file 87/293 (G), RM Jansenville to SNA, 9 February 1932.

37. NTS 2510, file 87/293 (I), RM Humansdorp District to SNA, 14 December 1925.

38. *Ibid*., Petition from clergy and lay persons of the Eastern Cape Midlands Conference, addressed to the Prime Minister, 2 December 1926.

39. Limb, *The ANC's Early Years*, p. 472.

little in the way of organised resistance against the tax. Resistance was carried out by the hundreds of thousands of men who would not or could not pay the tax – and accordingly, were convicted in courts across the country.

**Areas for future research**

A number of aspects of the Natives Taxation and Development Act are yet to be explored. One of the Act's necessary criteria, for example, was "adulthood". In a period of the country's history where state administration and infrastructure were often rudimentary, determining a man's precise age was not necessarily straightforward. How the courts and the Native Affairs Department went about dealing with that issue has not yet been examined. The entire thirty-year period from the beginning of Second World War to the Act's eventual repeal in 1969 also needs further investigation.[40] Was black resistance more effective in subsequent decades? What were the state's responses in later years? Was the charge of £1 increased, or did it remain unaltered? What were the conviction patterns during that period?

**Some final thoughts**

This dissertation begins by noting the paucity of sources dealing with the tax. Much of the available secondary source material is somewhat fragmentary, merely providing brief accounts as part of more generalised overviews of South African history. Nevertheless, there is a rich vein of information on the tax in primary sources,

40. The Act was repealed by the Bantu Taxation Act, No. 92 of 1969.

principally in archival records. This dissertation uncovers some of this material. The introductory chapter also notes that the issue of pass laws in this country is the subject of substantially more research. The pass laws and the Natives Taxation Act of 1925 were, however, inextricably linked. Both were mechanisms of control and punishment – and in their application and their effects, were often indistinguishable. This study deals with a centralised, standardised, racially-based tax on virtually all African men during the inter-war years. It was a tax that exacerbated economic hardship, discriminated between and within racial groups, and led to the criminal prosecutions of hundreds of thousands of men. By revealing some of the tax's ramifications, this study highlights a neglected chapter in the country's history.

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